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ABSTRACT

In a report issued in September 2000, the Federal Trade Commission reported that the motion picture, music recording, and electronic game segments of the entertainment industry intentionally promoted products to children that warranted parent cautions. This report responds to the request of the Senate Commerce Committee by focusing on advertising placement in popular teen media and disclosure of rating and labeling information in advertising. The report details commission findings indicating that the movie and electronic game industries have taken steps to better communicate rating information to parents, and that the game industry and a number of movie studios have placed some specific limits on ad placements to avoid targeting youth. The music industry is beginning to include the parental advisory in advertising, but has not taken steps to limit advertising to children. The report contends that all three industries continue to advertise violent R-rated movies, M-rated games, and explicit-content labeled recordings in media popular with teens. Although R-rated movies and M-rated games are less likely to be advertised in media with a large percentage of teens in the audience, they continue to be advertised in programs with a large number of teens in the audience. There is nearly universal disclosure of product ratings in ads for movies and games, and increasing disclosure of the parental advisory label in advertisements for explicit content music recordings. Disclosures of the reasons for movie and game ratings are now widespread, although not clear and prominent. The report provides suggestions for improving both areas, related to adoption of industry-wide standards and to imposition of meaningful sanctions for noncompliance with code provisions. It is noted that there has been almost no progress made by any of the three industries in improving their self-regulatory efforts to increase retail level compliance. The report's three appendices provide information on self-regulatory rating systems, the mystery shopper survey, the data collection methods, and demographics. (Contains 171 endnotes.) (KB)

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ED 480 372

MARKETING VIOLENT ENTERTAINMENT TO CHILDREN:

A ONE-YEAR FOLLOW-UP REVIEW OF INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING & ELECTRONIC GAME INDUSTRIES

A REPORT TO CONGRESS

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EXECUTIVE SUMMARY

In September 2000, the Federal Trade Commission issued a report requested by the President and Congress entitled, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* ("September 2000 Report™) That Report found that the three entertainment industries had engaged in widespread marketing of violent movies, music, and electronic games to children that was inconsistent with the cautionary messages of their own parental advisories and undermined parents–attempts to make informed decisions about their children-s exposure to violent content.

In January 2001, the Senate Commerce Committee asked the Commission to conduct two follow-up studies to determine: 1) whether violent R-rated movies, explicit-content labeled music, and M-rated games continue to be advertised in popular teen media, and 2) whether ratings or labels and content descriptions are included in the advertising. In its first follow-up report issued in April, the Commission reported that in the months following the September 2000 Report, the movie and electronic game industries had made some progress › both in limiting advertising in popular teen media and in providing rating information in advertising › but that the music industry had done little in either area.

Now, in this second and more comprehensive follow-up study, the Commission finds that the movie and electronic game industries have made commendable progress in limiting their advertising to children of R-rated movies and M-rated games and in providing rating information in advertising. The music industry has continued to advertise explicit content recordings in the most popular teen venues in all media, although it has made improvements in providing explicit-content labeling information in advertising.

Movies. For the motion picture industry, the Commission found the industry has made progress in both restricting advertising in popular teen media and in providing rating information disclosures. The Commission—s review of studio marketing plans for six violent R-rated and three violent PG-13-rated films revealed no express targeting of either R-rated films to children under 17, or PG-13-rated films to children under 13. In reviewing marketing practices, the Commission

found no ads for R-rated movies in popular teen magazines and little promotion of R-rated films in locations popular with teens. Its check of trailers for R-rated movies revealed none shown before G- and PG-rated feature films.

The one popular teen venue where studios continued to advertise R-rated films was television. The Motion Picture Association of America has set no specific limits on ad placements. Although some studios have announced they will not advertise R-rated movies in venues with a 35 percent or more youth audience share, this threshold permits continued advertising on popular television programs that attract larger absolute numbers of underage viewers than programs with a 35 percent or more youth audience share.

In its review, the Commission found the movie industry has made real progress in disclosing rating information in its advertising. It found studios now routinely disclose both ratings and reasons for ratings in their television, print, radio, outdoor, and online advertisements › a significant improvement since the September 2000 Report. Although the Commission identified a number of studios that have done a good job in making their disclosures clear and conspicuous, it also found that a significant percentage of rating reasons were not readable.

Music. For the music recording industry, the Commission—s review of ad placements revealed no change in industry practices since the September 2000 Report. Marketing documents for 13 explicit-content labeled recordings included plans for extensive advertising in the most popular teen venues in television, radio, print, and online media. Just before the issuance of the September 2000 Report, the Recording Industry Association of America had recommended that recording companies not advertise explicit-content labeled recordings in media outlets with a majority under-17 audience. Shortly after release of the September 2000 Report, however, it withdrew that recommendation. In the music industry-s-view, advertising targeted to all ages is consistent with its parental advisory labeling program which, unlike the rating programs for movies and electronic games, does not specifically designate an age for which labeled music may be inappropriate.

The Commission did find progress in the music industry—disclosure of parental advisory label information in its advertising. Recording companies increasingly are complying with recently announced industry-wide guidelines that the parental advisory be included in all advertising of

explicit-content labeled recordings. Although a promising start and a clear improvement since the September 2000 Report, continued efforts will be needed to achieve widespread compliance. Because the industry-s labeling program does not call for providing the reasons for the labels, such information is not part of the labeling or advertising disclosures.

Games. For the electronic game industry, the Commission found continued positive steps to limit ad placements in popular teen media, including new industry standards limiting ads for M-rated games where children constitute a certain percentage of the audience: 35 percent for television and radio and 45 percent for print and the Internet. The Commission found little advertising on popular teen television programs. However, in its review of marketing documents for 14 violent M-rated games, the Commission found that all planned at least some ad placements in media venues popular with teens, although only two expressly targeted an under-17 audience. The Commission also found continued placements of advertising in youth-oriented magazines and popular teen Web sites. The industry-s new anti-targeting standards should diminish › but likely not eliminate › such placements.

The Commission found that the game industry has made substantial progress in providing accurate and prominent rating information in advertising. With a revised game industry code now in place that strengthens and clarifies disclosure requirements across all media, there remain only a few key areas where the code and compliance need strengthening.

Undercover Shopper Survey. For this Report, the Commission again conducted an undercover ˜mystery™shopper survey, as it had for the September 2000 Report, to determine whether unaccompanied 13- to 16-year-olds could purchase tickets to R-rated movies, explicit-content labeled recordings, and M-rated games. The survey was designed to assess any changes made in response to the Commission-s recommendation in the September 2000 Report that all three industries improve their self-regulatory efforts by increasing retail level compliance by, for example, requiring identification or parental permission for sales to children. The results indicate that, unlike the commendable progress by the movie and electronic game producers in responding to the Commission—s recommendations of September 2000, retailers have made few changes since the first survey. Nearly half (48 percent) of the theaters sold tickets to R-rated movies to the underage moviegoers, while 90 percent of the music retailers sold explicit content recordings to

the underage shoppers. Neither of these results represents a significant change from the practices documented in the first survey. Electronic game retailers showed modest improvement in restricting purchase of M-rated games than last year, with 78 percent allowing shoppers to purchase M-rated games (compared to 85 percent earlier). Increasing retail level enforcement remains an important challenge, especially for the music industry.

This Report documents genuine improvements by movie and electronic game producers in the two areas of study: (1) limiting advertising placements for R-rated movies and M-rated games in popular teen media, and (2) disclosing rating and labeling information in advertising. It also identifies recent modest steps taken by the music industry to increase the number of explicit content labeling disclosures in advertising and to communicate the meaning of the label to parents. The Report offers suggestions for continuing improvements by all three industries in the areas of study. Because of First Amendment and other issues, the Commission continues to support private sector initiatives to implement these suggestions. The Commission believes that in addition to the role that industry self-regulatory programs can play, individual companies can take the lead in adopting best practices that go beyond those programs. In this Report, the Commission points to several companies that have done so. It encourages others to follow their lead. The Commission will continue to monitor the entertainment industry—marketing practices as Congress may direct.

I. INTRODUCTION

A. Commission Reports on Marketing Violent Entertainment to Children

In September 2000, the Commission issued its first report on the marketing of violent entertainment products to children by the motion picture, music recording, and electronic game industries ("September 2000 Report").[1] This report responded to a request from President Clinton[2] and similar Congressional requests[3] that the Commission undertake a study to answer two questions: whether these three entertainment industries promote products that they themselves acknowledge warrant parental caution in venues where children make up a substantial percentage of the audience, and whether their advertisements are intended to attract children and teenagers. After a comprehensive study that included internal industry marketing documents, consumer surveys, and television, print, and Internet advertising, the Commission concluded that the answer to both questions was "yes."[4]

The Commission found that although the three industries have self-regulatory systems that purport to rate or label their products to help parents make choices about their children's entertainment, industry members routinely targeted advertising and marketing for entertainment products with violent content directly to children. The Commission concluded that such advertising and marketing efforts undermine each industry's parental advisories and frustrate parents' attempts to protect their children from possibly inappropriate material. It called upon the industries to strengthen their self regulatory programs by: (1) prohibiting target marketing to children, and imposing sanctions for violations; (2) improving compliance with self-regulatory programs at the retail level; and (3) increasing parental awareness of the ratings and labels. Because of First Amendment issues, the Commission concluded that vigilant self-regulation offers the best approach to helping parents choose what is appropriate for their children.

In January 2001, the Senate Commerce Committee requested that the Commission prepare follow-up reports in the spring and fall of 2001 to examine whether the entertainment companies continue to advertise products labeled or rated for violent content in popular teen media, and whether rating or label information is included in advertisements of these products. The April 2001 Report provided a "snapshot" of industry advertising practices in the months following the September 2000 Report. It described in some detail new self-regulatory initiatives by the four

industry associations › the Motion Picture Association of America (¯MPAA™), the National Association of Theatre Owners (¯NATO™),he Recording Industry Association of America (¯RIAA™), and the Interactive Digital Software Association (¯IDSA™).[3] The Commission also reported its findings, based on its review of television and print advertising and industry Internet Web sites, that while the movie and electronic games industries had made progress, the music recording industry had done little to respond to the September 2000 Report. The Commission continued to urge the industries to strengthen their self-regulatory programs.

This is the second follow-up report. It examines the same issues as the April 2001 Report, but is based on more extensive information, as described below.

B. Sources of Information for this Report

To prepare this Report, the Commission collected information from a variety of sources. As it had done for the April 2001 Report, it tracked advertising placement in media popular with youth, and reviewed advertisements in all media › print, television, radio, and the Internet › to determine if they include clear and prominent rating and labeling information. In addition, the Commission reviewed internal company documents provided by nine individual industry members, including marketing plans for certain R-rated movies, explicit-content labeled music, and M-rated games released since the Commission-s September 2000 Report.[4] The company documents describe, among other things, where advertisements were placed and the target audiences they were intended to reach, the nature and extent of promotional activities used to generate consumer awareness and interest in the products, and company research. In addition, the Commission undertook an undercover shopper survey › as it had done for its September 2000 Report › to determine if products rated or labeled for violent content were being sold to children without their parents present.

More specifically, with respect to the motion picture industry, the Commission reviewed the marketing of six R-rated films and three PG-13-rated films released by three major studios between October 1, 2000 and April 1, 2001.[5] In selecting these films, the Commission chose R- and PG-13-rated movies whose ratings were based, at least in part, on violent content.[6]

For the music recording industry, the Commission studied the marketing of fifteen explicit-

content labeled recordings[7] released by three major recording companies between October 1, 2000 and March 1, 2001.[8]

For the electronic game industry, the Commission reviewed the marketing of fourteen violent M-rated games by three of the major companies in the marketplace.[9] The Commission selected M-rated games issued since the September 2000 Report.[10]

II. MOTION PICTURES

A. Marketing to Children: Ad Placement

1. Industry commitments following the September 2000 Report

In its September 2000 Report, the Commission found that the movie industry engaged in extensive marketing of violent R-rated films to children under 17.[11] It urged the industry to prohibit the practice,[12] and specifically to stop placing advertisements for R-rated movies in "media or venues with a substantial under-17 audience."[13] Although the Commission did not define "substantial" or specify an audience size or share that marketers should consider off limits, it pointed to the industry members' own marketing documents that identified the media and venues most effective in reaching teens.

As described more fully in the April 2001 Report, the MPAA responded to the Commission's recommendation by promising that each studio would review its marketing practices in order to further the goal of "not inappropriately specifically targeting children" in its advertising of films rated R for violence.[14] Four of the seven members of the MPAA, plus one non-member studio, made specific commitments not to market violent R-rated movies to those under 17.[15] Three of those studios announced they would not advertise R-rated movies in media with a substantial audience of children under 17, defining "substantial" as more than 35% of the audience.[16]

2. Industry advertising placement since the September 2000 Report

In April, the Commission reported, based on its review of publicly available information, that studios were continuing to advertise R-rated films on the most popular teen television programs, but had stopped advertising in youth-oriented publications.[17]

For this Report, the Commission's review of the media plans submitted by the three studios, unlike those submitted for the September 2000 Report, does not indicate that R-rated films were

targeted at children under 17, or that PG-13-rated films were targeted at children under 13. Although the studios continued to advertise R-rated films on television programs popular with teens, they largely fulfilled their pledges not to advertise on programs with a youth audience share of 35% or greater. Further, studios did not target youth audiences through promotions in youth-oriented venues or in print ads.

The sections below review the studios—practices in placing advertising in major media including television, print, radio, and online.

a. Television ads

In its September 2000 Report, the Commission—s review of studio marketing plans revealed that studios repeatedly advertised R-rated violent films on television programs with substantial teen audiences.[18] Most of the television campaigns for R-rated movies that targeted children under 17 were aimed at least in part at children aged 12 and above.[19]

Since then, the film industry has taken some positive steps to reduce target marketing in this medium. The three studios submitting marketing documents for this Report, for example, have adopted policies not to advertise violent R-rated films on television programs with an under-17 audience share of 35% or greater, although two of the studios have excepted certain programming from their policies.[20] All the media plans reveal that the studios have tried to honor their advertising placement policies. For the R-rated films reviewed, each studio considered the age composition of television program audiences when considering potential buys; based on this demographic data, each studio declared certain programs or day parts on certain stations off limits for advertising. For example, these studios stopped advertising violent R-rated films during most of the programming day on MTV, given the high percentage of youth viewers.[21] Moreover, none of the studios chose programs for advertising R-rated films on the basis of data showing programs— popularity with viewers under age 18.

To supplement information from the marketing plans, the Commission independently monitored motion picture advertising on television programs with substantial youth audiences.[22] It found that studios advertised violent R-rated films on some of the most popular programs with a substantial youth audience that, despite their popularity, do not have a 35% youth audience share.[23] The monitoring, along with data showing when commercials first aired, also indicated

that a number of violent R-rated movies were advertised on programs that likely had youth audiences over 35%,[24] in some instances by studios that had pledged to observe the 35% threshold. Among the films advertised on these programs were MGM-s *Original Sin*, Sony/Columbia Pictures—*Baby Boy* and *Brother*, 20th Century Fox-s *Kiss of the Dragon*, and Warner Bros.—*Exit Wounds* and *Swordfish*.[25]

As the Commission noted in its April 2001 Report,[26] the 35% standard would have little effect if a studio wanted to target teens in advertising R-rated films. This is because many programs that are very popular with youth › especially network programs, which have the largest audiences, as compared to cable › have an under-18 audience share less than 35%.[27] The top ten daily network programs all have an under-18 audience smaller than 35%.[28] On the other hand, that 35% audience share includes 17-year-olds, who are permitted to attend R-rated movies with adult accompaniment.[29] Still, even programs geared to the very young do not necessarily meet the 35% threshold › for example, programs such as *Frosty the Snowman* (33%), *Rudolph the Red-Nosed Reindeer* (31%), *Mickey's Christmas Carol* (30%), and *Power Rangers* (23%) and *Digimon* (21%) afternoon specials.[30] As one studio document reviewed for this Report explained:

> Even NBC—s teen-aied TNBC Saturday morning block has programs that barely reach the 35% composition. *City Guys* at 36% and 32% for its two airings, *One World* at 35%, *Hangtime* at 30% are the only [non-prime-time] network programs not specifically targeting kids 2-11 or 6-11 that exceed 30%.[31]

In addition to implementation of the 35% standard, some studios and the networks have taken additional steps that are likely to discourage targeting youth in advertising R-rated films. Some networks have decided not to accept advertising for R-rated films in youth-oriented programming, including some programs that do not garner a 35% youth audience.[32] As noted above, in advertising R-rated films, studios no longer selected programs with the goal of maximizing impact among viewers under 18.

b. Print and radio ads

In its September 2000 Report, the Commission found ads for R-rated films in youth-oriented comic books and magazines, including some magazines that were specifically distributed in high schools.[33] For this Report, the Commission reviewed similar publications with a substantial or majority readership under 17,[34] and found much had changed. It found no advertisements for any

R-rated film from any studio.[35] Moreover, none of the studios' media plans reviewed for this Report called for advertising R-rated films in youth-oriented publications; such publications did figure in the marketing plans for two of the three PG-13 movies reviewed.

With respect to radio advertising, the picture was more mixed. The media plans showed that one studio collected audience demographic data for spot radio buys,[36] and avoided advertising on certain parts of the day on particular stations because of teen audience shares over 35%.[37] The other two studios did not appear to collect radio audience demographic data. All three of the studios, however, in coordinating promotional efforts with radio stations, such as free screening passes, did inform the radio stations that the promotion should take place during a day part when the audience was age-appropriate.

c. In-theater trailers

In its September 2000 Report, the Commission found that trailers for R-rated films were shown to audiences containing substantial numbers of youngsters attending PG-13 films,[38] and that theaters did not always honor their policies that trailers should be for films within one rating of the feature film.[39] The Commission recommended that the industry prohibit placing advertising for R-rated movies in venues with a substantial under-17 audience. Since then, industry members have pledged to improve their trailer placement practices,[40] and the Commission has found broad compliance with those pledges.[41]

For this Report, the Commission reviewed trailers shown before three films › *Princess Diaries* (G), *Atlantis* (PG), and *Tomb Raider* (PG-13).[42] It found no trailers for R-rated movies shown before either *Princess Diaries* or *Atlantis*,[43] and found trailers for four R-rated movies before *Tomb Raider*.[44] Its review of studio documents showed that, with one exception, studios had requested that trailers for R-rated films be shown before only features rated PG-13 or R.[45]

With respect to trailers for films not yet rated, but likely to obtain an R rating, studios apparently are not showing them before either G- or PG-rated features,[46] and the three studios from which the Commission requested documents have instituted specific policies to treat films anticipated to obtain an R rating as they would a film that has already been rated R.

d. Promotions

In its September 2000 Report, the Commission found that promotions for R-rated films, such

as free passes to movie screenings and free merchandise related to the film (*e.g.*, t-shirts, mini-posters, etc.)[47] were distributed at places where teens congregate. Marketing plans reviewed for this Report revealed no similar practices. The three studios— promotional activities for R-rated films were not directed to youth-oriented groups or locations,[48] but to coffee shops, nightclubs, bars, bookstores, arcades that do not admit children under 18, or other locations that are less likely to attract teens. The Commission did find that flyers and free passes occasionally were distributed at locations likely to be popular with teens such as roller rinks, comic book stores, skate and snowboard shops, and even a "laser tag™ facility, but that these activities tended to occur in just one or two cities and were not widespread.[49] In addition, studios advised newspapers that, in promoting films with retail partners, they should take steps to ensure that those retailers— products are age-appropriate in view of the rating. Studios also included language on screening passes and flyers indicating that children under 17 would not be admitted to R-rated films without a parent or guardian.

e. Internet ads

Internet advertising on third-party sites was a relatively small component of the ad campaigns for the films reviewed for this Report. Two of the three studios did little advertising online for their R-rated films, and the Web sites on which they did advertise did not have substantial youth audiences. The third studio was active in advertising R-rated movies online, and advertised on some Web sites popular with youth.[50]

f. Other steps

Documents received from the studios detail a variety of other steps they have taken to avoid targeting violent R-rated films to children under 17. Each of the studios encouraged third parties, including theaters, video retailers, and the press, to enforce the rating system or to inform consumers that children under 17 must be accompanied by a parent or guardian to attend an R-rated film. Studios declined to arrange actors–appearances to promote R-rated films on television programs with 35% youth audiences, and did not provide press kits or other publicity materials to youth-oriented publications. The studios limited licensing of characters from R-rated films for age-inappropriate products, such as toys or action figures, and did not cross-promote the films with companies that sell age-inappropriate products.[51] Studios also began to enforce age

restrictions for entry into screenings or previews for R-rated films, which had been overlooked previously.

The industry also changed its research practices. Studios previously conducted research, including focus groups, surveys, and trailer tests, on the film preferences of children under 17 for R-rated films. In response to the September 2000 Report, a major research company, after consultation with the studios, stopped using children under 17 in test groups for R-rated movie marketing unless specifically requested by a studio.[52] Review of trailer tests and commercial tests provided to the Commission indicates that the studios did not conduct research for R-rated movies on children under 17.

3. Analysis of industry practices since the September 2000 Report

It is clear that members of the movie industry have taken a number of significant steps since the Commission's September 2000 Report to avoid marketing R-rated films in venues with substantial youth audiences. The one exception is television advertising. The commitment not to advertise on programs with youth audiences of 35% or greater, while a positive step, does not preclude advertising – heavily if desired – on programs with substantial youth audiences. In this area, the industry has not made the significant changes seen in other areas.

The three studios studied for this Report have largely complied with the MPAA's 12-point initiative and their own additional commitments. Each of these studios apparently attempted in good faith to observe the 35% standard; one, Warner Bros., deserves note for going beyond the letter of its commitment and avoiding advertising in some media that its commitment technically would allow.

B. Ratings and Reasons for Ratings in Ads

1. Industry commitments following the September 2000 Report

In its September 2000 Report, the Commission found that while movie advertisements generally displayed the film's letter rating, they did not include the reasons for the rating. The Commission recommended that studios clearly and conspicuously display both the rating and reasons for ratings in all advertising and product packaging, and encourage the media to include this information as well.[53]

In response, the MPAA agreed to "seek ways to include" rating reasons in print and online advertising, but did not make a similar commitment with respect to television or radio advertisements. More specifically, it prescribed that rating reasons for all but G-rated films be included in print advertising above a certain size, Web sites, and outdoor advertising such as billboards. Member studios agreed to include the rating reason on packaging for new video and DVD releases and in the preface to those materials, and to encourage theaters and newspapers to provide rating reasons. NATO members, too, pledged to seek ways to disseminate rating reasons.

2. Industry advertising practices since the September 2000 Report

In April, the Commission reported that disclosure of rating reasons in the advertising of R-rated films had improved substantially since the September 2000 Report. It found that studios routinely included reasons for ratings in both print and television advertisements. However, in many print ads, the reasons were too small to read or were obscured by graphics, and in television ads they often disappeared from the screen too quickly to be read and understood.

The sections below review the studios' disclosures of ratings and rating reasons in the various advertising media.

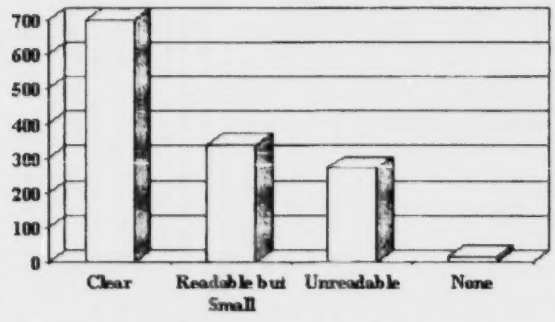
a. Television ads

Although the MPAA does not require disclosure of rating reasons in television ads, each of the studios did provide them. In reviewing the television advertising for the nine films studied for this Report, the Commission found a range of practices. For example, one studio invariably included rating reasons in its advertisements, and they were prominent and of sufficient duration to be read, while another provided the rating reasons, in small print, for only one of its films.

For studios' television ads as a whole,[54] most ads included both the rating and rating reasons. Notably, the rating was provided both in audio and visual formats. The rating reasons, however, were usually not displayed long enough for a viewer to read them.

b. Print and radio ads

To determine the extent to which ratings and reasons were disclosed and legible in print media, the Commission reviewed more than 1300 ads for R-rated films in magazines and newspapers, including the youth-oriented magazines discussed in the Advertising Placement section above,[55] as well as additional magazines[56] and newspapers.[57] With very few exceptions, the Commission found that the ads displayed both the rating and the reasons for the rating.[58] Although that the rating reasons were often not clear and conspicuous, the Commission found improvement since the April 2001 Report,[59] with more than half of the disclosures reviewed for this Report reasonably clear and prominent. The large majority of ads by Disney/Buena Vista, Dreamworks, MGM, Paramount Pictures, Universal Pictures, and Warner Bros. featured rating reasons that were of adequate size, and very few of these companies–ads contained rating reasons that were not readable. For smaller ads, less than five inches in height, rating reasons are not required by the MPAA and are not included in many small ads. Nevertheless, some studios have provided legible rating reasons in ads as small as three inches. Two of the studios indicated they would use letters next to the rating icon to signal which types of content the film-s-rating was based on (*e.g.*, ˜l™for ˜language,™ v™for ˜violence™)! Although this practice exceeds the MPAA-s-requirements, consumers may not understand what the letters signify.



The Commission reviewed 1322 print ads for motion pictures.

The studios also improved their communication of rating information on ads for home video. In the print ads reviewed, ratings and rating reasons were usually provided in ads for DVDs or videocassettes. Although rating reasons were often printed in small type or over ad images that

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made them difficult to read, the rating letter was usually provided separately from the box art, making the rating more prominent.

This limited improvement in disclosure of rating information in studios–home video did not extend to retailers–advertising for home videos. A review of "free-standing inserts™by major retailers, distributed in newspapers, indicates that these retailers — advtising for videocassettes and DVDs, with one exception, did not feature the film rating or rating reason.[60]

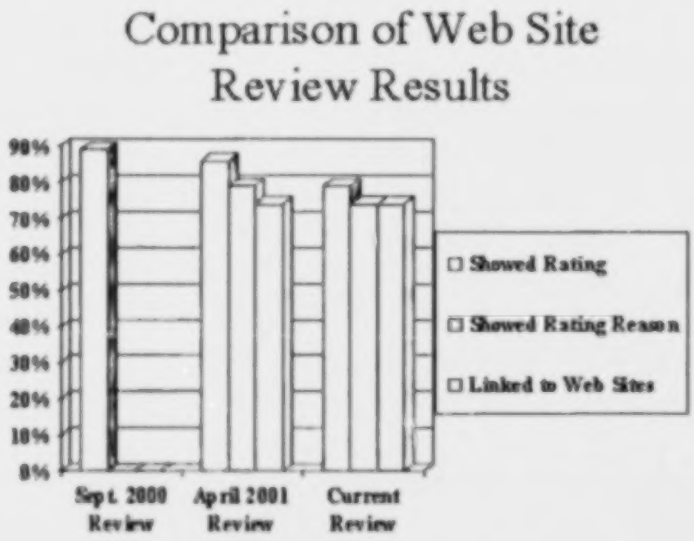
For radio, each of the studios studied for this Report included rating reasons in its radio ads, although not required to do so by the MPAA. Moreover, each took steps to have radio stations make clear that promotions such as free passes were limited to those 17 or older and include information about the film-s-rating when announcing the promotion.

c. Internet Advertising

(1) Studio Web sites

For its September 2000 Report, the Commission—s review of official movie Web sites revealed that nearly all the sites displayed the movie-s-rating somewhere on the site, but none displayed the movie-s-rating reasons.[61] Information from the studios studied for this Report shows that the studios have since changed their Web sites to provide rating information and to link to additional sites with rating information as required by the MPAA. A check of the official sites for the nine films studied reflects that each of the sites did provide the rating and, with one exception, the rating reason.[62]

A review of 34 official movie Web sites from all studios showed that more than three-quarters (27 of 34) displayed the films—rating, usually on either the teaser page or home page.[63]



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Almost as many (25 of 34) provided rating reasons.[64] The few sites that offered the opportunity to purchase movie tickets at third parties--sites displayed the rating and rating reason in close proximity to the link to the third-party site. Overall, 25 of 34 sites (74%) linked to at least one of three rating information sites, usually to both filmratings.com and parentalguide.org.[65] These figures are similar to those reported in April,[66] and represent a significant improvement in the online disclosure of rating information since the September 2000 Report.

(2) Theater Web sites

The Commission reviewed Web sites for 18 major movie theater circuits,[67] a larger group than reviewed for the April 2001 Report. The Commission found that almost all (17 of 18) of the sites included the movie ratings, although only seven of 18 (39%) displayed rating reasons. Two thirds (12 of 18) of the sites provided detailed information about the rating system generally.[68] Ten sites (56%) linked to at least one rating information Web site.[69]

Twelve sites offered visitors the opportunity to purchase tickets through third-party Web sites. All three of those third-party sites displayed the rating, and two › Movietickets.com and Fandango.com › displayed the movies--rating reasons.[70]

Theater Web Site Review Results

Question	NATO Member Theaters		Non-NATO Theaters		All Theaters	
Was the rating displayed on the site?	14 of 14	100%	3 of 4	75%	17 of 18	94%
Was the rating reason displayed on the site?	6 of 14	43%	1 of 4	25%	7 of 18	39%
Does the site provide information about the MPAA ratings system?	8 of 14	57%	4 of 4	100%	12 of 18	67%
Does the site link to rating information at MPAA.org, filmratings.com, or parentalguide.org?	7 of 14	50%	3 of 4	75%	10 of 18	56%

(3) Home video retailer Web sites

The Commission surveyed rating information practices at the five online movie retailers—the same it reviewed for the April 2001 Report.[71] Practices have not materially changed. In nearly every case, the sites provided the movies letter rating, but only TowerRecords.com displayed rating reasons. None of the sites linked to rating information at other sites, nor did any of the sites provide information on the MPAA ratings.[72]

d. Other steps

The studios often printed rating information, including the age restriction, on screening passes and preview invitations. The studios also included rating information on home video packaging, on the videotape or DVD itself, and on pay-per view and pay-TV.

3. Analysis of industry practices since the September 2000 Report

The disclosure of reasons for movie ratings has improved considerably. Since the September 2000 Report, when the Commission found that rating reasons were absent from movie advertisements, studios now widely include rating reasons in television, print, radio, outdoor, and online advertising. Their remaining challenge is to make the information clear and conspicuous to consumers in all media.[73]

C. Box Office Enforcement of the Rating System

In its September 2000 Report, the Commission reported on its nationwide undercover study that found almost half of the theaters sold tickets to R-rated movies to unaccompanied children under 17.[74] In response, both NATO and the MPAA exhorted theaters to improve enforcement,[75] building on previously announced efforts to strengthen enforcement at the box office.

To determine the effect of these changes, the Commission conducted a second nationwide undercover study.[76] The Commission contracted with a "mystery shopper™ company that recruited 13- to 16-year-olds across the country to visit theaters and attempt to purchase tickets to R-rated movies. The survey results were consistent with those of the Commission's first survey. Slightly more than half of the theaters (52%) refused to sell tickets to an R-rated movie to the shoppers, and only 39% of the cashiers asked the shopper's age at point of sale. These figures are essentially unchanged from the survey conducted in 2000. While both the 2000 and

2001 surveys show that movie theaters are the most strict of the three industries in restricting sales to children under 17, theaters can be more effective, particularly with younger children. One-third (33%) of 13-year-olds were able to purchase tickets to R-rated movies.[77] As the age of the shopper increased, so too did the percentage of purchases of R-rated movie tickets.

FTC Mystery Shop Results By Age - Movies

Q. Was the shopper able to make the purchase?

	13 years old	14 years old	15 years old	16 years old	Total
No	67%	57%	47%	38%	52%
Yes	33%	43%	53%	62%	48%
# of shoppers	69	82	76	73	300

III. MUSIC RECORDINGS

A. Marketing to Children: Ad Placement

1. Industry commitments following the September 2000 Report

In the September 2000 Report, the Commission found that the music industry engaged in extensive marketing of explicit-content labeled recordings to children under 17.[78] Finding that such marketing undermines the message inherent in the label that parental review is warranted, the Commission urged the industry to adopt industry-wide prohibitions on marketing explicit content recordings in "media or venues with a substantial under-17 audience."[79]

The industry-s-trade association, the RIAA, notes that the parental advisory labeling program for music, unlike the age-based rating systems for movies and games, does not designate an age for which labeled music may be inappropriate. Accordingly, it asserts that marketing explicit-content labeled music to all ages is consistent with its labeling program;[80] it has not changed this position in response to the Commission-s-Report.[81]

Individual members of the music industry are free to adopt policies on advertising placement, and two of the three companies contacted for this Report indicated that they consider the appropriateness of particular media outlets when advertising explicit content recordings.[82] It remains unclear how this consideration affects actual advertising of explicit content recordings.

2. Industry advertising placement since the September 2000 Report

In April, the Commission reported, based on its review of publicly available information, that the major recording companies were continuing to place advertising for explicit content music on television programs and in magazines with substantial under-17 audiences.

For this Report, the marketing plans submitted by the companies also indicate marketing of explicit-content recordings aimed at children under 17. Two plans referred to promoting explicit recordings at high schools; another referenced promotions in "teen magazines."[82] Although one marketing plan identified a specific target audience (18 - 34) that did not include children under 17,[83] the marketing documents for the remaining recordings detailed plans to place advertising in media that would reach an audience with a majority or substantial percentage of children under 17.

a. Television and radio promotions

As noted in earlier reports, explicit-content labeled recordings are promoted extensively on cable television music programs with substantial teen audiences. Frequently, the marketing documents reviewed included plans to secure promotions on popular after-school and early-prime-time cable music programs, such as MTV's *Total Request Live*, *Direct Effect*, and *Sunday Night Heat* and BET's *Rap City* and *106th and Park*.[84] These programs have a majority or substantial youth audience.[85]

Although the marketing documents indicated less use of network and non-music cable television advertising, several did include plans to advertise labeled recordings on television programs with large under-17 audiences, such as *WWF Smackdown*, *Malcolm in the Middle*, *Dawson's Creek*, and *That 70's Show*.[86]

To supplement information from the marketing plans, the Commission monitored advertising for explicit-content labeled recordings during 31 popular teen programs.[87] The eight-week review revealed regular advertising for these products on programming during after-school and early evening hours. Four recording companies – Universal Music Group, BMG Entertainment, EMI Recorded Music, and Warner Music Group – ran advertisements for explicit content recordings on *Total Request Live*, *Direct Effect*, *WWF Heat*, *106th and Park*, and/or *WWF Smackdown*.[88] A review of first-airing data showed that all five major music recording companies advertised their

explicit content recordings on popular teen shows such as *Total Request Live*, *Direct Effect*, and *106th and Park*.[89]

Many of the marketing documents the Commission reviewed for this Report also described plans to promote explicit content recordings on radio stations with a substantial audience of 12- to 24-year-olds. These promotional efforts included seeking radio play of edited versions of singles, placing advertisements, and providing giveaways of labeled albums.

b. Print advertising

Like those plans reviewed for the September 2000 Report,[90] the marketing plans reviewed here revealed that the recording companies routinely used print advertising to promote their explicit-content labeled recordings to children under 17. Marketing documents for eight out of 14 explicit-content labeled recordings discussed placing ads in magazines with a majority or substantial teen audience (such as *Metal Edge*, *Right On!*, *Seventeen*, *Skateboarding*, and *Thrasher*),[91] as well as obtaining reviews of recordings, magazine covers, and feature stories about artists who released the recordings in these same publications.[92]

The Commission reviewed the June through September 2001 issues of eight magazines with a majority or substantial readership under 18,[93] and found that each of the five major recording companies had placed advertisements for explicit content recordings in at least two of the following magazines: *Metal Edge*, *Right On!*, *Teen*, *Teen People*, *Thrasher*, and *YM*.[94]

c. Internet marketing

As the Commission found in its September 2000 Report, Internet advertising is a key feature of marketing explicit recordings. Eleven of the 14 marketing plans reviewed for this Report discussed efforts to promote explicit recordings on popular music or general sites with significant teen audiences, including mtv.com, bet.com, getmusic.com, iturf.com, music.com, launch.com, teenpeople.com, and seventeen.com.[95] These efforts included artist interviews and chats, banner ads, featured artist pages with audio and video samples, listening parties, merchandise giveaways, and reviews of labeled recordings.

3. Analysis of industry practices since the September 2000 Report

The Commission—s review reveals no changes in industry practices since the September 2000 Report. The industry members continue to advertise explicit content recordings in the most popular teen venues in all media › television, radio, print, and online.

B. Advisory Labels and Reasons for Label in Ads

1. Industry commitments following the September 2000 Report

In its September 2000 Report, the Commission found that the music recording companies rarely included parental advisories in advertising.[96] It suggested that industry members clearly and conspicuously disclose advisories › as well as the reasons for advisories › in all advertising for labeled recordings. Just before the September 2000 Report—s release, the RIAA had recommended that by October 2000 recording companies should include clear parental advisories in print advertising and online retail sites.[97] The Commission-s-review for the April 2001 Report, however, revealed that most advertising still did not contain an advisory.[98]

In the summer of 2001, the RIAA broadened the scope of its disclosure guidelines beyond print and online advertising. The RIAA recommended that industry members place clear parental advisories in all television and radio advertising, street marketing samplers, and music giveaways,[99] and that they post, where possible, lyrics of labeled songs on the artist-s-Web site or on songfile.com (an Internet database of over two million songs and their lyrics).[100] The RIAA also announced additional recording industry efforts to increase disclosures in advertising.[101] In particular, the RIAA and the National Association of Recording Merchandisers (˜NARM™) formed a Parental Advisory Implementation Task Force to assist the music companies in meeting the existing program guidelines. In addition, music industry leaders participated in a ˜Hip Hop Summit™to discuss issues associated with rap and hip-hop music, and endorsed the RIAA parental advisory program guidelines.

Moreover, to increase consumer understanding of the labeling system, the RIAA prepared a public service announcement and a brochure explaining the labeling system that it placed on its Web site and is making available to schools, libraries, and other consumer groups.[102] The RIAA did not adopt the policy followed by the movie and electronic game industries of including in

advertising the reasons a recording received the label.

Each of the companies that the Commission contacted for this Report has developed written policies and procedures to encourage full compliance with the RIAA advertising disclosure policies.[103] All now generally require an advisory to appear in *all* promotions for explicit content recordings, including television, print, Internet, and outdoor advertising.[104]

The companies also have committed to publicizing the parentalguide.org site that contains information on all of the entertainment rating systems.[105] In addition, one company will include the language "edited version available," along with the standard RIAA advisory, on all advertisements for recordings with both an explicit and edited version.[106] Moreover, all of the companies have encouraged disclosure of the advisory in cooperative advertising efforts with retailers and other third parties.[107] One company states that it will require that "retailers include the PA Notice in co-op ads for labeled product" and will encourage other companies with which it conducts joint promotions to include an advisory in all promotions.[108]

2. Industry advertising practices since the September 2000 Report

In reviewing corporate practices for this Report, the Commission notes progress in providing the parental advisories in the advertising of explicit content recordings. The sections below review the recording companies' advertising practices in disclosing parental advisories in media, including television, print, radio, and online.

a. Television ads

As noted, the RIAA's policy to include advisories in television advertisements was only recently announced. Its full impact is therefore difficult to measure. Three sample television advertisements for explicit-content recordings submitted to the Commission for this Report included no advisory or other information regarding explicit content. However, a recent spot-check of television advertisements shows an increase in parental advisories in the ads since the Commission's last monitoring efforts in late 2000-early 2001. Nineteen of the 48 ads reviewed contained the parental advisory label. Most of these advisories appeared unreadable; ads for only three of the recordings (*Devil's Night*, the *What's The Worst That Could Happen* Soundtrack, and *First Born Second*) were presented in a clear, readable format.

b. Print ads

The Commission-s review of print advertising shows a mixed picture. With a few exceptions, the sample print advertisements provided for 14 explicit content recordings did not display any advisory. When the label appeared in advertising, it usually was a black and white blur too small for consumers to read. Most of this advertising was disseminated in fall and winter 2000, shortly after the RIAA-s guidelines for print advertising went into effect in October 2000.

To assess more recent print advertising, the Commission reviewed the June through September 2001 issues of 11 magazines.[109] This four-month review uncovered few clear advisories in advertisements for explicit content recordings: 17 out of 111 ads for labeled recordings (15%) contained clear and conspicuous disclosures about an album-s explicit content.[110] Most of the ads (80 of 111) did not carry an advisory at all; some advisories (14 of 111) appeared as a black and white blur, too small or inconspicuously placed to be noticed or read. However, in the most recent magazine issues, 21 out of 37 ads for labeled recordings contained an advisory, 18 of which were readable, suggesting progress in communicating this information to the public.[111]

c. Internet ads

For this Report, as it had done for the April 2001 Report, the Commission surveyed Web sites to determine whether industry members were providing online disclosures about explicit content. It surveyed 40 artist/recording company sites and five major music retailer sites.

(1) Recording company Web sites

The review of official music Web sites shows little change from the Commission-s April survey.[112] Over half of the sites provided notice of a recording—s explicit content. Thirty-six sites showed a picture of the CD cover, with the advisory label appearing on 16 of the 36 (44%) covers. Only one of these advisories was legible. Many of the sites used other methods to communicate the explicit nature of a recording. Twenty-two of the sites (55%) provided consumers with additional information, usually in the form of an enlarged parental advisory placed somewhere on the site or a text disclosure stating "explicit™"placed near the picture of the CD on the purchase page (*e.g.*, Web sites for Missy Elliott, Nelly, Redman, Uncle Kracker, Sticky Fingaz, Pastor Troy, Dr. Dre, Big Punisher, Xzibit).[113] In addition, 14 of the 40 sites (35%)

provided the lyrics for the explicit content recordings. In the one area of significant change since the Commission-s earlier survey, ten of the 40 sites linked either to www.riaa.com or to www.parentalguide.org; previously the Commission had found no links to these sites.[114]

Recording Company Web Site Review

	YES		NO	
	#	%	#	%
Does the site contain album cover art?	36	90%	4	10%
Does the advisory appear on the cover art? (of 36)	16	40%	24	60%
Is the advisory readable? (of 16)	1	6%	15	94%
Is there other clear & conspicuous information about explicit content?	22	55%	18	45%
Is the record offered for sale?	17	43%	23	58%
Is there a link to www.parentalguide.org?	10	25%	30	75%

(2) Retailer Web sites

The survey of the Web sites of five major music retailers also showed results almost identical to those found in the Commission—s April survey. In both surveys, the Commission reviewed Amazon.com, Bestbuy.com, CDNow.com, Samgoody.com, and TowerRecords.com to see how these sites promoted five top-selling explicit content albums. Four of the five retailers provided some information, usually in a text disclosure that read ~explicit lyrics,™ ~explicit,™ or simply ~PA™ (for ~parental advisory™). Only Amazon.com continued to be in full compliance with RIAA-s recommendations that online retailers prominently display the parental advisory logo at all stages of the purchasing process, from search results to the shopping cart.[115] Amazon.com provides advisories that read ~explicit lyrics™ and appear in large easy-to-read print, prominently displayed, throughout the purchasing process. Best Buy, CD Now, and Tower Records continue to provide a more limited disclosure, such as an ~explicit™ disclosure at one point on the site or the cryptic

abbreviation "PA."[16] Samgoody.com has continued to use the disclosure "clean" next to the edited version, providing consumers with no information about the content of the explicit version.

Music Retailer Web Site Review

	Amazon	Best Buy	CDNow	Sam Goody	Tower Records
Does the site contain album cover art?	5 of 5	5 of 5	5 of 5	5 of 5	5 of 5
Does the advisory appear on the cover art?	4 of 5	4 of 5	2 of 5	3 of 5	4 of 5
Is the advisory readable?	4 of 4 when enlarged	0 of 4	0 of 2	0 of 3	0 of 4
Is there other clear and conspicuous information about explicit content?	5 of 5	5 of 5	5 of 5	0 of 5	5 of 5
	"explicit lyrics"	"parental advisory"	"explicit" and "explicit version"	only "clean" version noted	"explicit"
Are clear disclosures at every stage of the purchasing process?	5 of 5	0 of 5	0 of 5	0 of 5	1 of 5
Is there a link to www.parentalguide.org?	0 of 5	0 of 5	0 of 5	0 of 5	0 of 5

3. Analysis of industry practices since the September 2000 Report

Some members of the recording industry are beginning to comply with the RIAA recent guidelines on including the parental advisory in all advertising of explicit-content labeled recordings. Still, the Commission—s review of advertising practices for this Report shows a large percentage of advertising not yet in compliance. Continued effort will be needed by the RIAA, individual recording companies, and the music retailers if they want to ensure that the policy takes effect across the industry.

C. Industry Efforts to Enforce the Rating System at Point-of-Sale

In its September 2000 Report, the Commission reported that its nationwide undercover study had found that 85% of unaccompanied children ages 13-16 were able to buy explicit-content labeled records at retail stores.[117] A survey of 300 music stores conducted for this Report shows a similarly high percentage of sales: 90% of the unaccompanied teens, ages 13-16, were able to buy an explicit content recording.[118] Eighty-seven percent of the youngest shoppers › 13-year-olds › were able to buy explicit-content recordings. A breakout by age of the mystery shop results follows:

FTC Mystery Shop Results By Age - Music

Q. Was the shopper able to make the purchase?

	13 years old	14 years old	15 years old	16 years old	Total
No	13%	10%	9%	10%	10%
Yes	87%	90%	91%	90%	90%
# of shoppers	71	80	79	70	300

Such high percentages are not surprising, given the recording industry-s emphasis that its self-regulatory system does not limit the sale of explicit-content recordings to children.

This survey also found that only 12% of shoppers noticed information about the parental advisory system or about the store-s sales policy regarding explicit-content labeled recordings in the stores.[119]

IV. ELECTRONIC GAMES

A. Marketing to Children: Ad Placement

1. Industry commitments since the September 2000 Report

In its September 2000 Report, the Commission found widespread marketing of Mature(~M+)-rated electronic games to children under 17[120] › a practice that violated the anti-targeting provision of the game industry-s comprehensive self-regulatory code.[121] The Commission recommended that the industry improve compliance with its code and also clarify what constitutes

targeting. Responding to the Commission-s-Report, the IDSA adopted standards to limit advertising placements › the only industry to do so. Specifically, it set limits on the percentage of the audience under 17 that could be viewing, listening, or watching ads for M-rated games on TV and radio (35%), print (45%), and the Internet (45%).[122] As the Commission noted in the April 2001 Report,[123] this is a positive step that forecloses advertising M-rated games in some of the venues previously used to reach young teens. Nonetheless, the thresholds permit continued ad placements for M-rated games in many of the youth-oriented magazines, television programs, and Web sites that industry members had previously included in marketing and media plans that targeted 12- to 17-year-olds.

In addition, all three industry members contacted for this Report indicated that they are making efforts to avoid targeting their M-rated games to an under-17 audience. One company indicated that it will go beyond the industry-s-anti-targeting threshold and adopt a 35% threshold for print publications.[124]

Finally, the Entertainment Software Rating Board (˜ESRB™) recently informed industry members that, beginning in November 2001, it will levy a substantial fine against companies that engage in inappropriate target marketing.

2. Industry advertising placements since the September 2000 Report

In April, the Commission reported that its review of print and television advertising uncovered no advertising of M-rated games on television programs popular with teens, but continued widespread advertising in game magazines popular with teens.

For this Report, the Commission—s review of marketing plans submitted by three companies for four M-rated personal computer (˜PC™) games and nine M-rated television console games revealed ad placements for these products in all media venues popular with teens. Although none of the plans for the four PC games expressly targeted an under-17 audience, plans for two of the nine M-rated console games did; both plans were from the same company, and both post-dated the release of the September 2000 Report. Further, 12 of 13 marketing plans specified ad placements for M-rated game in venues with substantial, and at times majority, audience shares under 17.

The sections below review the practices of the electronic game industry in placing ads in the major media, including television, print, radio,[125] and online.

a. Television ads

Unlike the marketing plans reviewed for the September 2000 Report, which showed widespread advertising of M-rated games on popular teen television programs, only two of the 13 marketing plans reviewed for this Report (both console games) mentioned television advertising. Both, however, did plan placements on shows popular with teens, including MTV's *Jackass*, *Total Request Live*, and *WWF Heat*, *Titus*, *Dark Angel*, *King of the Hill*, *Simpsons*, *Malcolm in the Middle*, *Mad TV*, *That 70's Show*, and *Xena*.[126] The Commission confirmed that these planned ads ran after the release of the September 2000 Report. Some of these ad placements would have run afoul of the industry's advertising code's recently-enacted prohibition against placing ads for M-rated games on shows with a 35% or greater under-17 audience.[127]

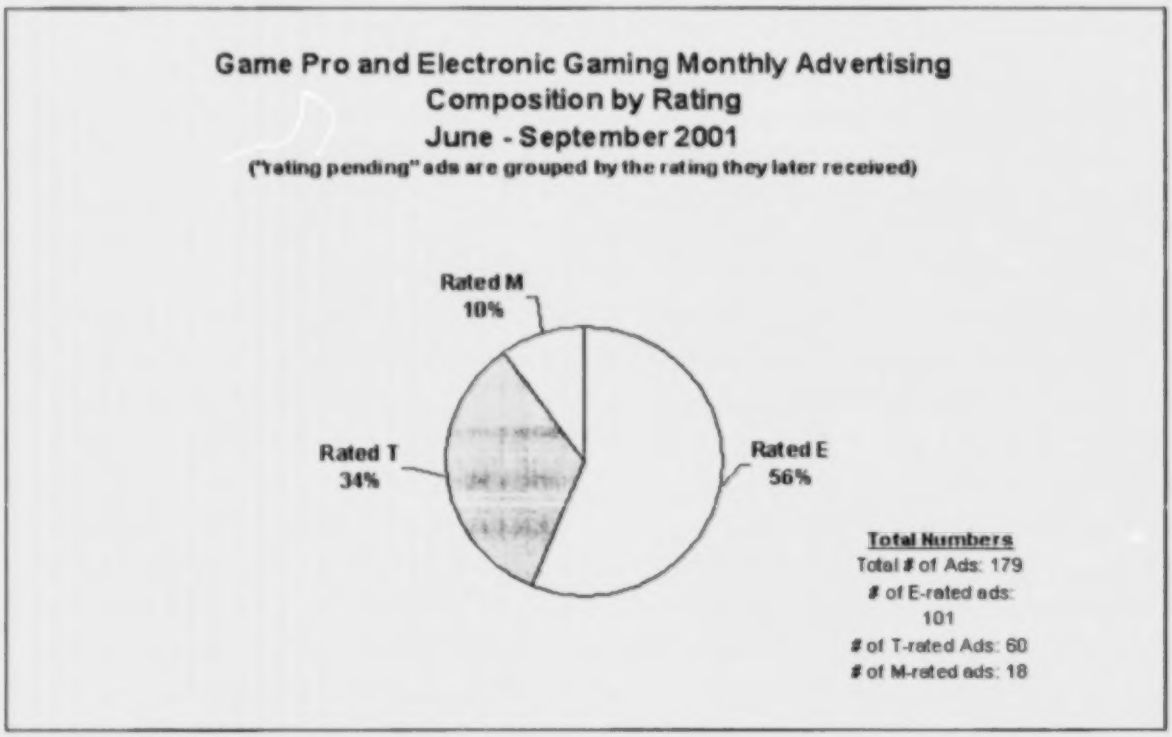
To supplement information from the marketing plans, the Commission monitored advertising on network, cable, and syndicated programs popular with teens for an eight-week period commencing in June 2001. It found little advertising for M-rated games – only three advertisements for a single M-rated game, *Twisted Metal: Black*, published by Sony Computer Entertainment America Inc., which appeared on *Titus* and MTV's *Jackass* and *Sunday Night Heat*. A separate review of all first-run ads for M-rated games between January 1, 2001 and August 20, 2001 revealed that the only other advertisement for an M-rated game was for *Onimusha: Warlords*, published by Capcom. The first ad for *Onimusha* also appeared on MTV. Thus, for most companies, the improvements in television advertising placements that the Commission reported in April (suggesting few ads for M-rated games on teen-popular shows) continue.

b. Print ads

In the September 2000 Report, the Commission found that game companies' marketing documents revealed plans to advertise M-rated games repeatedly in magazines with a substantial percentage of readers under 17. The media plans submitted for this Report show somewhat less, but still widespread, advertising in print media popular with teens. Although none of the plans for the PC games targeted teen-popular print media, nine of the plans for console games did target

such media, including publications such as *GamePro*, *Electronic Gaming Monthly*, *Expert Gamer*, *The Official U.S. Playstation Magazine*, *Playstation Magazine*, and *Tips & Tricks*.[128]

To monitor industry-wide ad placements, the Commission reviewed advertising during a four-month period (June-September 2001) in *GamePro* and *Electronic Gaming Monthly*, both with at least 40% readership under 17. This review showed that the percentage of ads for M-rated games in these publications has dropped slightly to 10% from the 13% the Commission reported in the September 2000 Report. A breakout of the magazine ads by rating[129] is presented below.



The Commission also conducted a more extensive review of five game enthusiast magazines with a high teen readership › *GamePro*, *Electronic Gaming Monthly*, *Expert Gamer*, *100% Independent Playstation Magazine*, and *Tips & Tricks*. This review indicated that nine industry members placed a total of 51 ads for twelve M-rated games over that four-month period: Capcom (*Onimusha*, *Resident Evil: Code Veronica*), Eidos (*Legacy of Kain: Soul Reaver 2*), Infogrames

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(*Alone in the Dark: The New Nightmare, Unreal Tournament*), Interplay (*Giants: Citizen Kabuto*), Konami (*Zone of the Enders*), Sierra (*Half-Life*), Sony Computer Entertainment America (*Twisted Metal: Black, Extermination*), Take 2 Interactive (*Rune: Viking Warlord*), and THQ (*Red Faction*).

The four issues of *GamePro* reviewed contain four M-rated game ads. Although not in effect until November, the industry-s revised advertising code would likely affect continued placement of M-rated game ads in *GamePro*.[130] Such ads would still be allowed in *Electronic Gaming Monthly, The Official U.S. Playstation Magazine, 100% Independent Playstation Magazine,* and other publications with a very substantial, but presently less than 45%, readership under 17.[131]

c. Internet ads

In the September 2000 Report, the Commission found that ten of the 11 game publishers studied had placed ads for M-rated games on Web sites popular with teens. Marketing documents reviewed for this Report show that these practices continue. Plans for three of the four PC games indicated ad placements on Web sites which typically have a higher percentage (e.g., 33%) of youth visitors than found in the general Internet population (20%). These sites include avault.com, cdmag.com, gamespot.com, gamespy.com, ign.com, and ugo.com.[132] Two of ten plans for console games also indicated online advertising targeting teen-popular Web sites, such as ign.com, ugo.com, and gamespot.com. These ads, however, would not appear to violate the new prohibition in the industry-s advertising code against ads for M-rated games on web sites with a 45% or greater under-17 audience.[133]

3. Analysis of industry practices since the September 2000 Report

The Commission—s review of print, television, and Internet ads and of game publisher marketing plans suggests that the electronic game industry is limiting its advertising on popular teen television programs, while continuing to advertise in game magazines and Web sites popular with teens. Although these ad placements reach substantial under-17 audiences, most would appear to comply with the new advertising code—s age-targeting requirements. In short, the new guidelines are having only a limited effect on altering placement practices, particularly for print and on-line advertisements, in the industry.

B. Ratings and Reasons for Ratings in Ads

1. Industry commitments since the September 2000 Report

At the time of the September 2000 Report, the electronic game industry's code required the display of rating icons and, in most cases, content descriptors (*e.g.*, "Realistic Violence," "Animated Blood and Gore") on packaging, in print ads, and online. In television ads it required a voice-over stating the game's rating, but not the content descriptor.[134] In its report, the Commission recommended that *all* advertising contain both the rating and the content descriptors.

Shortly before issuance of the April 2001 Report, the industry revised its code to strengthen and clarify its disclosure requirements in TV, radio, print, and Internet advertising,[135] although it still did not require content descriptors in television or radio advertising. These revisions included improving the TV voice-over for 15-second ads,[136] specifying that rating information (rating icon and content descriptors) must be displayed in the lower portion of print ads, and requiring the disclosure of content descriptors on all publisher Web sites promoting a game even if the site does not sell games online. The industry also initiated an expanded program of ad monitoring and, effective October 31, 2001, a sliding scale of warnings, monetary penalties, and other sanctions based on the seriousness/frequency of violations.

Finally, the IDSA and ESRB continue efforts to increase parent awareness of the rating system, by, for example, releasing public service announcements and encouraging retailers to increase store signing explaining the ratings.

2. Industry advertising practices since the September 2000 Report

The Commission's review for the April 2001 Report showed substantial compliance with the industry's code requirements, and considerable improvement over the results reported in September.[137] The sections below review the disclosures of ratings and content descriptors by the game industry in each of the media.

a. Television ads

In a spot review of TV ads for M-rated and Teen ("T")-rated games aired during the months of June and July 2001, the Commission found that all advertisements included the required voice-over of the game's rating,[138] although the voice-over was barely audible in an ad for the M-rated *Twisted Metal: Black*, published by Sony Computer Entertainment America. Consistent with the

advertising code, no television ad contained a content descriptor. These results are quite similar to those reported in April.

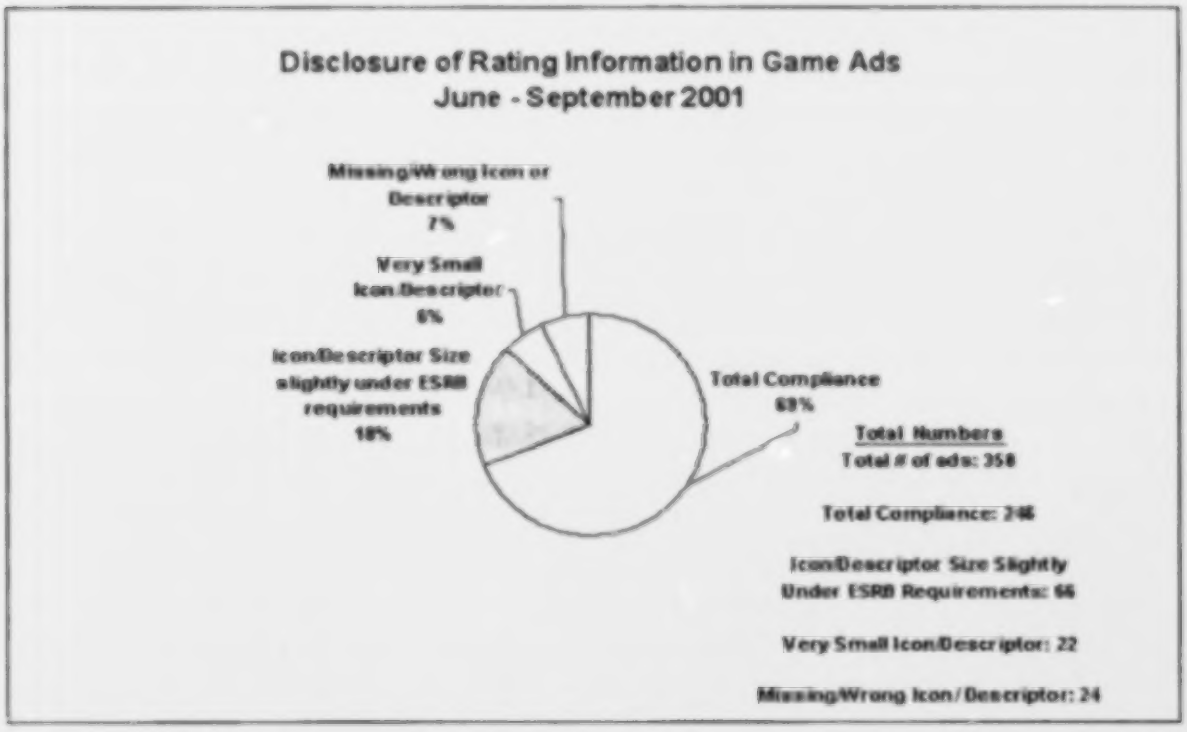
Just prior to the completion of this report, the Commission became aware of a new television ad run in October 2001 for *Spy Hunter*, a T-rated game, published by Midway Home Entertainment. Midway goes beyond the requirements of the advertising code, and discloses both the rating and content descriptor in its TV advertising.

b. Print ads

In April, the Commission reported that its review of print ads showed some improvement in the disclosure of rating information since the September 2000 Report. Ads nearly always included the game's rating icon, *i.e.*, M ("Mature"), T ("Teen"), E ("Everyone") or RP ("Rating Pending") and, in a large majority of instances, content descriptors. They also were largely readable, although often not in compliance with the code's size requirements.

For this Report the Commission reviewed print ads in eight popular game enthusiast magazines, *GamePro*, *PC Gamer*, *Computer Gaming World*, *Electronic Gaming Monthly*, *Expert Gamer*, *Tips & Tricks*, *100% Independent Playstation Magazine*, and *Nintendo Power*, during a four-month period (June-September 2001). Nearly a third of the ads reviewed promoted new games that had not yet been rated. For the games that had been rated, the Commission found broad compliance with the industry's advertising disclosure requirements. Only 13% were in substantial non-compliance either because they failed to display the ratings or descriptors or because the displayed rating icons or descriptors fell substantially below minimum size requirements.[139]

A breakout of those results appears on the following page.


Disclosure of Rating Information in Game Ads
June - September 2001
Missing/Wrong Icon or Descriptor 7%
Very Small Icon/Descriptor 6%
Icon/Descriptor Size slightly under ESRB requirements 18%
Total Compliance 69%
Total Numbers
Total # of ads: 358
Total Compliance: 248
Icon/Descriptor Size Slightly Under ESRB Requirements: 66
Very Small Icon/Descriptor: 22
Missing/Wrong Icon/Descriptor: 24

Nearly all of the major advertisers complied fully or substantially[140] with industry requirements.[141] Of the 19 who placed four or more ads for T- or M-rated games during the time period of the Commission—s review, four (Capcom, Infogrames, Sierra Studios, and Take 2 Interactive) did an especially good job of prominently disclosing rating information, by frequently using icons and descriptors larger than currently required by the industry—advertising code.[142] Three companies (Activision, Sega, and Take 2 Interactive) placed poster inserts in the magazines that featured scenes from games but failed to contain a rating icon or a descriptor.[143]

Of the 168 ads promoting games that had not yet been rated, 90 (53%) failed to comply with the advertising code-s-new requirement that there be descriptor boxes in the ads prominently displaying the Web address and telephone number of the ESRB where parents can get up-to-date rating information.[144] Although this requirement took effect in March 2001, the ESRB gave companies until November 1, 2001 before beginning to penalize publishers for non-compliance.

BEST COPY AVAILABLE

Although retailers are not subject to the same self-regulatory requirements as game publishers, they have been encouraged to follow the ESRB rating system.[145] Therefore, the Commission also reviewed retailer ads (from Best Buy, Electronics Boutique, Wal-Mart, Toys -R-Us, Hollywood Video, Target, Chips & Bits, and Amazon.com) in these same magazines. Generally, these ads promote several game titles with various ratings. With the exception of Chips & Bits and Amazon.com,[146] each of the retailers displayed the rating icon, usually on the clip art showing the games--package cover. In addition, the Commission reviewed retailer ads in free-standing inserts in the *Washington Post* Sunday edition over a six-week period. Although virtually all of the ads included the rating on the clip art for the game promoted, the rating was often hard to find and read. The one consistent exception was Best Buy, which displayed a larger icon for M-rated games and added the words "Mature rating™" next to the clip art for each M-rated game it featured in its Sunday inserts.[147] None of the retailer ads discussed above included content descriptors.

c. Internet ads

(1) Game publishers

The advertising code requires a number of specific disclosures for game publishers--Web sites. For example, if the publisher is selling the game online, both the rating icon and content descriptors must appear on the page where game information, such as price, is provided.[148] For game "demos" and trailers, the site must display the rating icon on the Web page where the demo and/or trailer is accessed.[149]

For this Report, the Commission reviewed 30 game publisher sites for M-rated games and found little change in some areas since the April 2001 Report, and improvements in others.[150] Consistent with the April 2001 Report, 83% of the sites displayed a rating, mostly on the home page or a teaser page.[151] Forty percent of the icons were not clear and conspicuous either because the rating was too blurry to read or its location not obvious, *i.e.*, a location requiring the viewer to scroll down the screen, without notice that scrolling was required.[152] Although 60% of the sites displayed content descriptors somewhere on the site (a significant improvement from prior reports), only 39% of the descriptors were clear and conspicuous.[153] On many sites, visitors could view the descriptors only by moving the mouse over the rating icon, but no indication was given that this step was needed to reveal the descriptors.[154]

At the 15 sites offering a demo or trailer, rating information appeared prior to downloading or viewing 40% of the time › another significant improvement since the April 2001 Report.[155] Some sites went beyond disclosing rating information and restricted access based on age. For example, the Electronic Arts sites for *Alice* and *Clive Barker's Undying* asked visitors to disclose their age before downloading trailers or demos and denied access to those entering an age under 17.[156] On the 21 sites where games could be purchased, 90% of the time the rating icon was clear and conspicuous and appeared on a page that the visitor must click through to purchase the game.[157] Somewhat less often (71% of the time) were the content descriptors displayed on these pages,[158] and seldom were they clear and conspicuous (27% of the time).

Five game sites warned that they contained subject matter that might not be suitable for children under the age of 17 or 18.[159] Fourteen percent of the sites restricted the purchase of the games to persons over age 16.[160]

Electronic Game Publisher Web Site Review

	Summaries by Sites		Percentage Yes
	Yes	No	
ESRB rating icon displayed on site?	25	5	83%
Clear and conspicuous?	15	10	60%
ESRB content descriptors displayed on site?	18	12	60%
Clear and conspicuous?	7	11	39%
Rating icon at point of download or viewing of a game clip?	6	9	40%
ESRB rating icon displayed during purchase process?	19	2	91%
Clear and conspicuous?	17	2	89%
ESRB content descriptors displayed during purchase process?	15	6	71%
Clear and conspicuous?	4	11	27%

(2) Retailers

As noted above, retailers have been encouraged to follow the ESRB rating system. For this Report,[161] the Commission reviewed the marketing of five M-rated games on five retailer sites (Amazon.com, BestBuy.com, EBGames.com, GameStop.com, and ToysRUs.com[162]). Only one retailer (EBGames.com) attempted to provide content descriptors during the purchase process. On the positive side, all but one retailer uniformly displayed the correct rating icon during the purchase process.[163] The rating icon usually was clear and conspicuous, with the "Mature™ icon clearly visible on the page describing the game and listing its price.[164]

All of the sites, except BestBuy.com, had pages with extensive ESRB rating information. Most of the sites placed a "Mature™ rating icon on the product-specific page that › if the viewer knew to click on the icon › linked to pages with ESRB information or the ESRB web site.[165] GameStop.com and EBGames.com allowed the visitor to browse for games by the ESRB rating.

Electronic Game Retailer Web Site Review

	Amazon	Best Buy	EBGames	Gamestop	Toys 'R' Us
Is rating icon displayed during purchase process?	5 of 5	4 of 5	5 of 5	5 of 5	5 of 5
Clear and conspicuous?	5 of 5	4 of 4	5 of 5	5 of 5	5 of 5
Are the content descriptors displayed during the purchase process?	0 of 5	0 of 5	3 of 5	0 of 5	0 of 5
Clear and conspicuous?	0 of 0	0 of 0	3 of 3	0 of 0	0 of 0
Is there a link to ESRB info. or ESRB.org?	5 of 5	0 of 5	5 of 5	5 of 5	5 of 5
Clear and conspicuous?	0 of 5	0 of 0	0 of 5	0 of 5	0 of 5

3. Analysis of industry practices since the September 2000 Report

With a comprehensive self-regulatory system in place, the electronic game industry continues

to make substantial progress in providing accurate and prominent rating information to the public.[166]

C. Industry Efforts to Enforce the Rating System at Point-of-Sale

1. Mystery shop

In its first nationwide undercover survey, the Commission found that unaccompanied children ages 13-16 were able to buy M-rated games at 85% of the video game retailers. A similar survey conducted for this Report shows only slight improvement. Seventy-eight percent of the children still were able to purchase M-rated games, and as many as 66% of the youngest shoppers › 13-year-olds › were able to buy an M-rated game. A breakout by age of the mystery shop results follows:

FTC Mystery Shop Results By Age - Electronic Games

Q. Was the shopper able to make the purchase?

	13 years old	14 years old	15 years old	16 years old	Total
No	34%	30%	10%	15%	22%
Yes	66%	70%	90%	85%	78%
# of shoppers	68	82	77	73	300

Even among several of those stores with programs in place to restrict sales,[167] 73% of the unaccompanied children were able to buy violent M-rated games.[168]

2. Online sales

In its survey of 30 game publisher Web sites for this Report, the Commission found that of the 21 games that could be purchased online, 15 could be purchased only by credit card, a practice that may necessitate parental involvement in sales to children. In addition, three of the sites that sold games expressly prohibited the sale of M-rated games to children under 17. Sites for two games (*Onimusha Warlords* and *Heavy Metal: Geomatrix*), both from Capcom, warned purchasers that they ˜[m]ust be 18 or older to purchase products from the Capcom Online Store.™ The third site (for Blizzard Entertainment-s *Diablo II*) advised purchasers that by submitting the purchase request for an M-rated game they ˜are representing that [they] are either over the age of

seventeen (17) or have obtained [their] parent or guardian—s permission to do so.™

Although none of the five retailer Web sites reviewed for this Report expressly prohibited sales of M-rated games to children under 17, two of the retailers (EBGames and GameStop) required a credit card to order the game online.[169] In addition, the product-specific pages for Amazon.com and ToysRUs.com stated, ˜Content suitable for ages 17 or older,™ and at ToysRUs.com, visitors interested in video games initially were presented only with games contained in a ˜Kid-Safe Zone™ games rated ˜Everyone™ and ˜Early Childhood.™ Visitors to ToysRUs.com were informed that for Teen and Mature games, they could click a hyperlink leading to the general computer and video games store.[170]

V. CONCLUSION

Responding to the request of the Senate Commerce Committee, the Commission focused its study on the practices of the motion picture, music recording, and electronic game industries in two areas: advertising placements in popular teen media and disclosure of rating and labeling information in advertising. The Commission found that practices adopted in the movie and electronic game industries since the September 2000 Report go a long way toward addressing some of the previously identified shortcomings in these areas. Both industries have taken steps to better communicate rating information to parents, and the game industry and a number of movie studios have placed some specific limits on ad placements to avoid targeting youth. The music industry is now beginning to include the parental advisory in advertising, but has not taken steps to limit advertising to children.

Although there has been real progress in some areas, as documented in this Report, the Commission concludes, in response to the Commerce Committee—sfirst inquiry, that all three industries do continue to advertise violent R-rated movies and M-rated games and explicit-content labeled recordings in media popular with teens.[171] Although R-rated movies and M-rated games are less likely to be advertised in media with a large *percentage* of teens in the audience, they continue to be advertised in programs with a large *number* of teens in the audience.

In response to the Committee—s secondhquiry, the Commission can report nearly universal disclosure of product ratings in advertisements for movies and games, and increasing, but not yet

widespread, disclosure of the parental advisory label in advertisements for explicit content music recordings. Disclosures of the reasons for movie and game ratings, while not universal, are now widespread, although still not clear and prominent in many instances. For music, the labeling program requires no reason for labels so none appears in any advertisements. There are steps the industries could take to improve in both areas:

- To make further progress in limiting the use of popular teen media to advertise violent entertainment products, the industries could adopt industry-wide standards to limit ad placements that take into account a range of factors that help identify those venues most popular with teens. Such factors could include, among other things, the percentage of the audience under 17; the total number of children reached; whether the content is youth-oriented; and the popularity with children and apparent ages of the characters or performers. For particular media, other factors › such as the time of day an ad airs on radio or television › also could be relevant.
- To further improve the disclosure of rating and labeling information in advertisements, the industries could focus on ensuring that both the rating or label and the reasons for the rating or label are effectively › and clearly › communicated to parents in advertising. This would entail adoption of industry standards for disclosures of such information in all media, as well as stepped-up monitoring or sampling by the self-regulatory associations to assure that disclosures are clear and conspicuous across all media. The electronic games industry, for example, has just instituted a program to sanction industry members for non-compliance with its code.

Improvement in both these areas also could be enhanced by programs to impose meaningful sanctions for non-compliance with code provisions, such as the one recently instituted by the electronic game industry.

For the motion picture and electronic game industries, some of these steps already have been taken, or involve practices already followed by some companies that could be standardized for the entire industry. For the music industry, however, taking these steps would require fundamental changes in its labeling program, to which it is not yet committed. These would include modifying the labeling program to require reasons for labels and the disclosure of those reasons in

advertisements. It would also require the industry to adopt the underlying premise that some labeled recordings should not be advertised in popular teen venues.

Finally, on the related issue of whether retailers have adopted effective sales policies that discourage sales of restricted or labeled products to children, the Commission must report that there has been almost no progress by any of the three industries in improving their self-regulatory efforts to increase retail level compliance by, for example, requiring identification or parental permission for sales to children.

In this area, industries could:

- Encourage third-party retailers to check age or require parental permission before selling or renting R-rated/M-rated/advisory-labeled products.

Because of First Amendment and other issues, the Commission continues to support private sector initiatives to implement these steps. It believes that in addition to the role that industry self-regulatory programs play in this area, individual companies also can play an important role in adopting best practices that go beyond those programs. In this Report, the Commission points to a number of companies that have done so. It encourages others to follow their lead. The Commission will continue to monitor the entertainment industry—marketing practices as Congress may direct.

ENDNOTES

1. *See* Letter from William J. Clinton, President of the United States, to Janet Reno, Attorney General of the United States, and Robert Pitofsky, Chairman, Federal Trade Commission (June 1, 1999) (on file with the Commission).

2. Legislation calling for the FTC and the Justice Department to conduct such a study was introduced in both houses of Congress following the Columbine incident. *See* Amendment No. 329 by Senator Brownback *et al.* to the *Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999*, S. 254, 106th Cong. ¯ 511 (1999); H.R. 2157, 106th Cong. (1999); 145 Cong. Rec. S5171 (1999).

3. The April 2001 Report described the following industry-wide initiatives:

- The MPAA=s 12-point initiative promised: to avoid running trailers for violent R-rated films before G-rated feature films; to review policies regarding marketing violent R-rated movies to children; to avoid using children in research for R-rated films; to install compliance officers to review their marketing practices; to encourage movie theaters to enforce the R-rating restriction; and to take steps to include the reasons for ratings in print advertisements, on Web sites, and in home videos. The MPAA member studios › the Walt Disney Company, Metro-Goldwyn-Mayer, Paramount Pictures, Sony Pictures Entertainment, Twentieth Century Fox Film Corp., Universal City Studios, and Warner Bros. › plus Dreamworks SKG, which is not an MPAA member, signed on to the initiative. *See* Motion Picture Association of America, *A Response to the FTC Report* (Sept. 26, 2000).

- NATO=s 12-point initiative: reaffirmed its ID-check policy for R and NC-17 films; promised not to show trailers advertising R films before any G or PG film, and only before PG-13 films if consistent in tone and content with the feature film; and committed to appoint an executive compliance officer and seek additional ways to disseminate rating information. *See* National Association of Theatre Owners, *Response of the National Association of Theatre Owners to the Report and Recommendations of the Federal Trade Commission* (Nov. 2, 2000) (on file with the Commission).

- The RIAA=s revised parental advisory labeling system recommended the use of: broad standards for making the explicit-content labeling decisions; and guidelines for placing the advisory in print advertising and on retail Web sites. In July 2001, the RIAA announced that its members supported placing the advisory label in *all* advertising for explicit content recordings, as well as increasing efforts to provide parents with information about the labeling system. *See* Testimony of Hilary B. Rosen, President and CEO, Recording Industry Association of America, House Subcommittee on Telecommunications and the Internet, July 20, 2001.

- The IDSA=s revised Advertising Code of Conduct (AAdCode™@) limited ad placements in

magazines, television shows and Internet sites popular with teens. The Entertainment Software Rating Board ("ESRB") stepped up its enforcement of the AdCode, and began to develop additional sanctions for repeat violators of its provisions. *See* Testimony of Douglas Lowenstein, President, Interactive Digital Software Association, House Subcommittee on Telecommunications and the Internet, July 20, 2001.

4. This Report, while more inclusive than the April 2001 Report, is not as comprehensive as the September 2000 Report. The number of companies, as well as the number of entertainment products studied, is significantly smaller than the number studied for the September 2000 Report. For the most part, therefore, the results of this study are not directly comparable to the results of the previous studies. Also, the findings in this Report do not purport to be statistically projectable to industry practices as a whole.

5. The Commission sent requests to Miramax Film Corp., Paramount Pictures, and Warner Bros. These studios were selected because, during the period of review, they had released the most films rated R based, at least in part, on violent content. Each studio cooperated in supplying its marketing materials.

For a description of the MPAA rating system for motion pictures, see Appendix A.

6. These films were selected after taking into account factors such as the extent of the marketing of the film during the review period, the number of theaters where it was released, and the amount it grossed.

7. Because the recording companies do not keep track of which recordings received the parental advisory label due to violent content, as opposed to some other explicit content, the Commission requested materials for recordings labeled for any reason due to their "explicit" content (which could include strong language and/or depictions of sex, violence, or substance use). The Commission did not attempt to evaluate which recordings contained violent lyrics. Albums were selected based on their appearance as a top selling recording on the Billboard 200 chart of February 3, 2001, and on marketing information collected for the April 2001 Report.

For a description of the RIAA labeling system for music, see Appendix A.

8. The Commission sent requests to EMI Recorded Music, N.A., Sony Music Entertainment, Inc., and UMG Recordings, Inc. The companies were selected on the basis of industry data showing that they were the largest distributors of explicit-content labeled music during the review period. Each company cooperated in supplying materials.

9. The Commission sent requests to Activision, Inc., Capcom Entertainment, Inc., and Eidos Interactive, Inc. The companies were selected on the basis of their size and the extent of marketing of M-rated games during the review period. Each company cooperated in supplying its marketing materials.

For a description of the ESRB rating system for electronic games, see Appendix A.

10. The Commission selected all the games rated M for violence that were marketed in the review period and not previously reviewed by the Commission.

11. September 2000 Report at 13-14. A high percentage of the companies–internal marketing documents showed explicit target marketing to children; others, while not explicit, appeared to target children. *Id.*

12. *Id.* at 54.

13. *Id.*

14. Motion Picture Association of America, *A Response to the FTC Report*, Sept. 26, 2000. *See also Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000) (statement of Mel Harris, President and Chief Operating Officer of Sony Pictures Entertainment) (presenting MPAA initiatives), *available at* 2000 WL 1530870. The MPAA meets with the studio compliance officers periodically to review compliance, but does not independently monitor studios–advertising placement and does not have a system of sanctions to penalize any studios that ¨inappropriately specifically™target children. Although the ¨not inappropriately specifically target™language gives the studios latitude to specifically target a youth audience for an R-rated film in circumstances where the studio deems such targeting to be appropriate, some studios › including Disney, Dreamworks, Fox, and Warner Bros. › committed not to market R-rated films to youth. *See Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000).

Not every studio is an MPAA member. Apart from Dreamworks, independent studios › including Artisan (maker of *Blair Witch Project*) and USA Films (maker of *Traffic*) › have not signed on to these initiatives. Independent studios that want their film to be rated must provide their advertising materials to the MPAA for compliance review, regardless of whether the studios are MPAA members, but need not abide by other MPAA policies such as the commitment to review marketing to avoid inappropriately specifically targeting those under age 17.

15. *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000), Fed. News Serv., LEXIS, Legis Library, Hearng [sic] File.

16. *Id.*

17. April 2001 Report at 14. The Commission-s-independent monitoring of television advertising placement for the April 2001 Report revealed that ¨studios continue to advertise R-rated movies at the times and on the programs that are most effective in delivering those ads to teen viewers.™ *Id.* at 6.

18. September 2000 Report at 14.

19. *Id.*

20. One of the studios, Warner Bros., publicly committed not to advertise on any program with a 35% under-17 audience. Both of the other studios, without announcing the policy formally, internally committed to respect the 35% threshold, but excepted certain programming from the 35% standard, *e.g.*, they may advertise on programs with an audience share greater than 35% that air after 9 p.m. or on certain programming formats such as sports. Additional studios, as noted above, have announced that they have adopted a 35% standard, but others have not. Because the three studios that submitted documents to the Commission used demographic data for audience share under age 18 (as opposed to age 17) in determining whether programs had a 35% youth audience share, the actual threshold they applied was somewhat less than 35%. Unless otherwise noted, television audience data cited in this report and in Appendix C indicate the programs—under-18 audience share. Nielsen television audience data are divided into age groups between ages 17 and 18, rather than between ages 16 and 17.

The 9 p.m. cutoff is one hour earlier than the 10 p.m. cutoff used by the Federal Communications Commission to limit the time that "indecent" programming may be broadcast on television. The FCC presumes children are in the audience between 6 a.m. and 10 p.m. and therefore prohibits "indecent" programming during that time. 47 C.F.R. § 73.3999. Five of the top ten cable shows and two of the top ten network shows in terms of audience size among 12-17-year-olds started at 9 p.m. or later.

21. This is in sharp contrast with the past, when studios heavily advertised R-rated films on MTV. According to one article, "MTV is the holy grail in marketing [motion pictures] to the 12-to-24 demo...." Tim Swanson, *MTV's Ad-vantage [sic]: Teen-targeting cabler plugs summer pics*, Daily Variety (July 18, 2001). Six of the top 10 cable programs for teens age 12-17 aired on MTV.

22. The Commission monitored 19 network and cable programs for eight weeks in June and July 2001. *See* Appendix C, Table A for a list of the programs. The Commission also reviewed syndicated programming airing on five channels in New York City and Los Angeles for two to three hours daily during June and July 2001. *See* Appendix C, Table B for a list of the programs.

23. Commercials for violent R-rated films airing on programs with substantial youth audiences included, for example, Columbia's *Baby Boy* on *Grounded for Life, Jackass, Jamie Foxx, Livewire, Sister Sister, Sunday Night Heat,* and *WWF Smackdown*; Fox's *Kiss of the Dragon* on *Jackass, Moesha, Sister Sister,* and *The Simpsons*; MGM's *Original Sin* on *Jackass* and *WWF Smackdown*; Sony Pictures' *Brother* on *Jackass, Sunday Night Heat,* and *106th & Park*; and Warner Bros.' *Swordfish* on *Dawson's Creek, Grounded for Life,* and *Jamie Foxx.*

24. In most cases, the Commission does not have audience data for the precise time the studios considered placing ads or for the precise dates that the ads were aired. Therefore, ad placements

that appear to violate a studio—s comitment may have been based on projected youth audiences under 35%. Indeed, studio documents that provided both actual and estimated audience demographics indicate that some ads aired on programs with actual audiences over 35% that had been projected to have audiences under 35%. Although it is not possible to predict the composition of the actual audience that will view a program, when studios advertise on programs with an estimated youth audience approaching 35%, it is likely that they will exceed that threshold from time to time.

It is also possible that audience data for some of these programs on the precise dates ads aired would indicate youth audience shares below 35%. At least some of the programs, such as *Jackass, Road Home*, and *106th & Park*, would very likely have been projected to have youth audiences above 35%, however, because the programs and/or the day part and channel on which they are aired perennially reach an audience over 35%. *See* note 25, *infra*.

25. The Commission-s television monitoring suggests that at least five movies were advertised on programs with a youth audience of 35% or greater. For example, ads for MGM-s *Original Sin* appeared on *Jackass, WWF Smackdown,* and *Drew Carey;* Sony-s *Brother* on *106th & Park, Jackass,* and *Sunday Night Heat*; Sony-s *Baby Boy* (repeatedly) on *Jamie Foxx, WWF Smackdown,* and *Sunday Night Heat*; 20th Century Fox-s *Kiss of the Dragon* on *The Simpsons* (repeatedly), *Fresh Prince, Moesha, Jamie Foxx, Jackass, Home Improvement,* and *Drew Carey*; and Warner Bros.–*Swordfish* on *Jamie Foxx*.

Data identifying the programs on which each ad for violent R-rated films first aired › or ˜first airing™ data › showed ads for two films on programs likely to have had an over 35% youth audience. Ads for *Baby Boy* first aired on *Jackass* (38% youth audience according to Nielsen) and *Sister Sister* (40%). Sony/Columbia Pictures did not commit to advertise only on programs with youth audiences under 35%, so this advertising does not necessarily violate any specific commitment. Sony did commit, however, to review its advertising practices to avoid inappropriately specifically targeting children. Also, an ad for *Exit Wounds* first appeared on MTV-s *Road Home*, at a time of day that had a 50% youth audience according to Nielsen data. Warner Bros. did commit to avoid advertising on programs with a 35% youth audience. It is not clear whether this placement was a result of a mistake by a Warner Bros. ad buyer or by MTV, or whether the ad was intentionally aired at that time.

Note that the audience data provided here for syndicated programs are for the particular ˜spot™ markets where those programs were aired. Therefore, these data do not correspond to the Nielsen data reported in Appendix C, which reflect the audience nationwide.

26. *See* April 2001 Report, Appendix A.

27. One studio analysis indicated that there were eight prime-time network programs › all on one of two networks › with a 35% youth share in the fourth quarter of 2000; in syndication, there were only six programs over 35%. There were no programs over 35% during late night network television, and only children—s programming (such as Saturday morning programs) exceeded that

percentage during the networks— early morning day part. Data are for shows airing more than once in the same time period.

28. These were the top ten Nielsen-ranked programs in terms of the number of viewers 2-17 years old. Of the top ten syndicated weekday programs based on the number of viewers 2-17 years old, only three have a youth audience share over 35%.

29. As noted in n.20, *supra*, the three studios that submitted documents to the Commission for this report used television demographic data for people 18 and above. Teens age 17 make up approximately 1.4% of the U.S. population, *see* Resident Population Estimates of the United States by Age and Sex: April 1, 1990 to July 1, 1999, with Short-Term Projection to November 1, 2000 (Population Estimates Program, Population Division, U.S. Census Bureau), and make up a slightly larger percentage of the television viewing audience. A program with a 35% under-18 audience would have a lower percentage of under-17 viewers. The size of the difference would vary depending on the particular program.

30. These programs aired in December 2000. It is likely that parents watching these programs with their children make up a portion of the audience for these programs, reducing the percentage of children in the measured audience.

31. These programs were identified in another studio's media plan, for a PG-13 film, as "Teens™ programs.

Even studio marketing plans that expressly target teens advertise on programs with youth audience shares below 35%. This was evident from the media plans examined by the Commission for the September 2000 Report which found that youth-targeted films were primarily advertised on programs with a youth audience share below 35%, and even shows with 22% age 6-17 audiences were characterized in media plans as "youth-targeted."™ It was also evident from the media plans examined for this Report for the two PG-13 films that expressly targeted teens. Only 20 of 125 programs on which these PG-13-rated movies were advertised had a youth audience of 35%.

32. It is possible for studios to evade these requirements, if they choose to do so, by making "spot™ buys in local markets instead of nationwide buys directly from the network. *See* September 2000 Report at n.86.

33. September 2000 Report at 17-18.

34. June to September 2001 issues of the following 17 comic books and magazines › all with a substantial youth audience › were reviewed to assess ad placement: *100% Independent PlayStation*; *CosmoGirl*; *DC Comics*; *Electronic Gaming Monthly*; *Game Pro*; *Marvel Comics*; *Metal Edge*; *Nintendo Power*, *Right On!*; *Seventeen*; *Teen*; *Teen Movieline*; *Teen People*; *Thrasher*; *Tips & Tricks*; *WWF*; and *YM*. See Appendix C for additional details.

35. In April, the Commission also reported it found no ads for R-rated films in youth-oriented publications. April 2001 Report at 6.

36. Demographic data are not available on radio audiences for children under age 12. Nevertheless, some stations have audiences with 35% of the listeners in the 12-17 age group, and in some cases almost 50% of the audience in that age group.

37. Although that studio apparently did in fact advertise during restricted day parts on some occasions, its compliance with that policy in general suggests that those placements were made mistakenly. On other occasions, when the studio-s-tracking indicated that some radio buys were proposed for restricted times, those buys were not made.

38. Some of these PG-13 films were targeted at audiences as young as six years old. September 2000 Report at 15.

39. September 2000 Report at 16.

40. All but one MPAA member, plus Dreamworks, agreed that they would request that theaters not show trailers for R-rated violent movies before G- or PG-rated films. *See Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000), Fed. News Serv., LEXIS, Legis Library, Hearng [sic] File. Paramount Pictures, while not adopting the industry policy with respect to trailers before PG-rated films, did agree to request theaters not to show trailers for violent R-rated films before G-rated films. NATO pledged that each member theater would not show such trailers before any G or PG film, and only before PG-13 films if the trailers are consistent in tone and content with the feature film.

41. The few violations of the pledge not to run trailers for R-rated films before G- or PG-rated feature films appeared to be the result of decisions by individual theater operators. A few NATO member theaters showed trailers for R films before PG-13 films that were arguably inconsistent in tone and content with the feature film.

42. The Commission contracted with TES, a commercial trailer checking service. It checked 125 theaters across the country showing *Tomb Raider*, 128 showing *Atlantis*, and 85 showing *Princess Diaries*. The check took place June 15-17 and August 3-5, 2001. *Princess Diaries* was the only major G-rated movie release during summer 2001.

43. The Commission checked more theaters and more screens than had been tested previously. It found trailers for five PG-13-rated films shown before the G-rated *Princess Diaries*; most of these films— trails were shown in only a few theaters. These trailer placements do not violate either the MPAA-s-or NATO-s-commitments. It should be noted that incompatibility of trailers with feature films › whether trailers for R-rated films before PG-13 features or trailers for PG-13 rated films before PG- or G-rated features › does give rise to complaints from parents. *See, e.g.*, Cindy Richards, *Terror in the Trailers*, Chicago Sun-Times (July 25, 2001) at 37 (suggesting that exhibition of trailer for PG-13-rated *Planet of the Apes* before PG-rated *Shrek* was inappropriate).

44. Showing trailers for R-rated films before PG-13-rated features does not violate MPAA commitments, and only violates NATO's pledge if the two films—tone and content are inconsistent. Theaters frequently preview R-rated movies before PG-13 films.

45. One studio requested that a trailer for an R-rated film be shown before one PG-rated feature.

46. The NATO and MPAA initiatives do not forbid the exhibition of trailers for films *likely to* garner an R-rating › but not yet rated › before G or PG films. Yet, only one trailer for an unrated film that was later rated R was shown before a G- or PG-rated movie › a trailer for Universal's then-unrated *American Pie 2* was shown before PG-rated *Atlantis* at one theater. *American Pie 2* was not rated R on the basis of violent content, however.

47. September 2000 Report at 17. The Commission found that street marketing teams distributed items at places popular with teens, such as malls, teen clothing stores, sports events, high schools, youth organizations, and arcades. The Commission did not review promotional activities in its Spring Report.

48. In one instance, free passes to an R-rated film were distributed to students through a high school.

49. PG-13-rated film promotions continued to be targeted to high school groups and youth organizations, but there is no evidence that the promotions were directed to children under age 13.

50. The Commission reviewed Nielsen//NetRatings demographic data on 28 Web sites on which the studio advertised. Of these 28 Web sites, five had youth audiences over 35%, and two more had youth audiences over 30%.

51. One exception was a third party—s promotionalampaign for one product related to an R-rated film. The product's marketing was directed in part to snowboard shops, and street teams were sent out to hype the product at World Wrestling Federation tours. Ads were featured in MTV radio, MTV.com, wrestling programs, and MTV. The third party assured the studio that the "marketing campaign will focus on outlets which appeal to all age groups, such as MTV and the [WWF].™As noted above, MTV is a key outlet for marketing to youth on television. *See supra* note 21. Further, wrestling programs attract substantial youth audiences. *See* Appendix C at A-2.

52. No such special requests were made for any of the six films that the Commission reviewed.

53. September 2000 Report at 55.

54. The Commission reviewed ads for violent R-rated movies from seven studios.

55. *See supra* note 34.

56. In addition to the 17 magazines with a substantial youth audience that were reviewed to assess ad placement, the following seven publications (June to September 2001 editions) were reviewed to assess whether ratings and rating reasons were provided: *Computer Gaming World; Expert Gamer; PC Gamer; Rolling Stone; Spin*; *Vibe;* and *Wizard.*

57. The Commission reviewed ads in the following newspapers with a general circulation (not targeted to children): *Atlanta Journal-Constitution, Boston Globe, Chicago Sun-Times, Chicago Tribune, The [Cleveland] Plain Dealer, Dallas Morning News, Los Angeles Times, [New York] Newsday, New York Post, New York Times, San Francisco Chronicle, San Jose Mercury News, Seattle Times, Seattle Post-Intelligencer,* and *Washington Post*. *See* Appendix C, Table H.

58. Fourteen ads did not include the rating reasons.

59. In its review for the April 2001 Report, the Commission found more than 30% of the ads unreadable; for this review it found less than 20% unreadable. Of 1322 ads reviewed, 699 were clearly readable, 339 were small but marginally readable, and 270 were unreadable.

60. The Commission reviewed inserts from Best Buy, Circuit City, Kmart, Toys -R- Us, CompUSA, Target, Staples, and Amazon.com. Best Buy clearly disclosed the film ratings. No retailer provided rating reasons. It is possible that the rating information was not included in key art provided to the retailers by the studios.

61. *See* September 2000 Report, Appendix H.

62. The site that did not provide the rating reason did link to rating information at another site.

63. The Commission examined the following 34 motion picture Web sites in July 2001: *3000 Miles to Graceland, Along Came a Spider, Amores Perros, Angel Eyes, Apocalypse Now Redux, Baby Boy, Bones, Brother, Captain Corelli's Mandolin, Collateral Damage, Crimson Rivers, The Deep End, Deuces Wild, Exit Wounds, The Forsaken, Frailty, Ghosts of Mars, The Heist, Impostor, Jeepers Creepers, Joy Ride, Kiss of the Dragon, Knockaround Guys, Memento, Novocaine, One Night at McCool's, O, The Salton Sea, Session 9, Sexy Beast, Swordfish, Tailor of Panama, Weight of Water,* and *With a Friend Like Harry*. Some of these films were released by studios that are not MPAA members.

64. There were exceptions. In some cases, rating information was absent altogether. For example, Commission staff could not find any rating on the sites for three movies from Lions Gate (*Amores Perros, Frailty,* and *The Weight of Water*). Newmarket-s-*Memento* site did not include rating information; furthermore, when browsing the site, a visitor could view a picture of a dead body with a bloody, nearly decapitated head. The sites for Warner Bros.—*3000 Miles to Graceland* and USA Films—*Session 9* required the visitor to navigate through the site in order to find the rating. To view the rating for *Session 9*, it was necessary to click on an unmarked link to another screen where a small, blurry rating could be found at the bottom of the page.

65. Warner Bros. had very clear and visible links to these three sites on its movie sites.

66. In the review for the April 2001 Report, 30 of the 35 sites checked (86%) displayed the film-s rating and 25 of 35 (71%) provided the film-s rating reason.

67. The Commission examined the following motion picture theater Web sites: AMC, Carmike, Century Theatres, Cinemark, Clearview Cinemas, Edwards Theatres Circuit, General Cinemas, GKC Theatres, Goodrich Quality Theatres, Hoyt—s Cinemas, Kerasotes Theatres, Loews Cineplex, Marcus Theatres, National Amusement, Pacific Theatres, Regal Cinemas, Silver Cinemas/Landmark Theatres, United Artist, and Wallace Theater Corp. and reviewed practices pertaining to the following motion pictures: *Baby Boy, Brother, Kiss of the Dragon, Made, Memento, Scary Movie 2, Sexy Beast,* and *Swordfish.*

68. Several of the chains, including Century Theatres, Cinemark, General Cinemas, and Regal Cinemas, provided especially extensive rating information. National Amusement had an excellent feature for providing rating information: the site displayed a small rating guide on nearly every page that linked to more extensive information. The sites for AMC, Century Theatres, Edwards Theatres Circuit, and Wallace Theater Corp. had clear warnings that children under 17 would not be admitted to R-rated features at their theaters without a parent or guardian.

69. All of these sites provided a link to the MPAA web site, while three also linked to filmratings.com. National Amusement linked to both of those sites, as well as to parentalguide.org.

70. Movietickets.com had a warning that: ˜Children under 17 will not be admitted without an adult.™The third ticket seller, Moviefone.com, set up the ticketing process so that one could not purchase only a ˜child™ticket to an R-rated movie. None of the sites required purchasers to provide age to purchase a ticket to an R-rated movie.

71. The retailers were Amazon.com, BestBuy.com, Reel.com, SamGoody.com, and TowerRecords.com. Commission staff reviewed practices pertaining to the following movies: *The Claim, The Gift, The Pledge, Proof of Life, Snatch,* and *Wes Craven's Dracula 2000.*

72. Amazon.com stated that R-rated videos were ˜[n]ot for sale to persons under age 18.™

73. Theaters and video retailers also could improve their practices by disclosing rating reasons in their Web sites.

74. The 2000 survey found that slightly more than half (54%) of the theaters enforced the MPAA's restriction that children under age 17 must be accompanied by an adult to see R-rated movies. Almost half (48%) of the cashiers asked the shopper-s age at point of sale. *See* September 2000 Report, Appendix F.

75. *See supra* note 3.

76. *See* Appendix B for a discussion of the survey methodology and results.

77. *See id.*, Table I.

78. In the September 2000 Report, the Commission, as it has done for the other reports, applied the age limit (17) of the movie and electronic game industries—self-regulatory programs to its analysis of ad placements for music recordings. Its review of marketing plans for 55 recordings revealed detailed plans to market the recordings in media that would reach a majority or a substantial percentage of teens. The plans for 15 of the 55 explicit content recordings expressly identified teenagers as part of their target audience. *See* September 2000 Report, Section V.

79. September 2000 Report at 54.

80. In recent testimony, Hilary Rosen stated the industry-s-position:

> [T]he FTC repeatedly criticizes us [the music recording industry] for marketing inappropriate content to teens. Put simply, the RIAA Parental Advisory Program is not an age-based rating system. Therefore, all of the criticisms of the FTC that we ~are marketing material we have already determined is inappropriate for children, to children,™s simply unfounded.

Statement of Hilary B. Rosen, President and CEO, Recording Industry Association of America, House Subcommittee on Telecommunications and the Internet, July 20, 2001.

81. Prior to release of the September 2000 Report, the RIAA had recommended to its members that advertising for explicit content recordings not appear in venues where the primary market demographic was under 17, *i.e.*, venues where 50% or more of the audience was 16 years of age or younger. However, as described more fully in the April 2001 Report, the industry withdrew this recommendation shortly after the September 2000 Report-s-release. *See* April 2001 Report at 13.

In explaining the withdrawal of its proposal, the RIAA informed the Commission that its adoption would increase the likelihood of law enforcement actions against its members and would ~discourage participation in the successful parental advisory program.™*See* Letter from Mitch Glazier, Senior V.P., Recording Industry Ass-n-of America, to FTC staff (undated but faxed Mar. 28, 2001) [hereinafter *RIAA March 2001 Letter*].

82. One company explained that if a recording bears the parental advisory label, the advertising for the recording is consistent with that decision: ~The judgment as to whether a particular medium is appropriate for advertising or promoting a stickered recording is based on a variety of factors, including, among others, the audience for such medium. [The company] vests discretion in the heads of its labels to make decisions as to the media in which to advertise to promote such label—s products, and such determinations are made by each label head on a case-by-case basis.™ Another company explained that each label considers ~the appropriateness of each publication and other media for advertising and marketing of a particular release in light of the content of that release™and ~whether to purchase television spots before 9 p.m. for stickered recordings for

which an edited version is not available.™

One company-s~Parental Advisory Guidelines Implementation Policy,™dated June 2001, which reaffirms its commitment to the labeling system, provides that: (1) the head of each recording label should take personal responsibility for overseeing the process; (2) each recording label should be held accountable for implementing the company-wide labeling policy; (3) determinations as to whether a particular recording should be labeled are to be made on a case-by-case basis, taking into account the language and content of the particular recording in context; (4) consumer advertisements for labeled recordings should include the parental advisory label; (5) the recording companies should consider whether a recording is labeled in selecting the appropriate media in which to advertise or promote that particular recording; and (6) that a position should be created and filled by a senior officer with responsibility for overseeing compliance with the policy.

> This company also explained that:
> inflexible policies cannot take into account the wide demographic range of many of the media in which [it] may promote to advertise its recordings. Some media that predominantly appeal to college-aged people, for example, may also be attractive to a broad range of children and young adults.

83. Although the marketing materials for this recording focused less than the materials for other recordings on advertising in media with a substantial teen audience, they still indicated planned advertisements in *Skateboarding* magazine, an appearance on *Total Request Live*, and a review in *Seventeen* magazine. *See* Appendix C for demographic data for popular teen television programs and magazines.

84. These promotions usually involve advertisements, airplay of music videos, and appearances by the artists. Because almost all the marketing materials for explicit-labeled recordings emphasized the importance of placing music videos on these channels, the music videos, even if edited to remove some explicit content, continue to play a key role in promoting the sale of explicit recordings to an under-17 audience. As Hilary Rosen stated recently, ~MTV has completely changed the relationship between the artist, the image, and marketing to the music fan. It created a new, and now completely necessary, component to artist development.™ Billboard, July 28, 2001, p. 68. Videos do not indicate when they are based on explicit-content labeled albums.

85. *See* Appendix C. In addition, an MTV advertisement stated that for three years MTV has ~been the #1 cable network for 12-24 year olds.™*See* Advertising Age, May 22, 2000, at 49; *see also* Advertising Age, Apr. 3, 2000, at 25. Similarly, an advertisement for The Box stated that it is the ~#1 cable network for teens 12-17 VPVH [viewers per viewing hour] in Monday-Sunday prime.™The Hollywood Reporter Movies & the Media Special Issue, May 16-20, 2000, at S-21. Other demographic data provided to the Commission by two of the companies for the September 2000 Report indicated that 42% of MTV—s audince is between the ages of 12 and 17, and that 83% of the audience of The Box is between the ages of 12 and 34. *See also* Jeffrey D. Stanger & Natalia Gridina, *Media in the Home 1999: The Fourth Annual Survey of Parents and Children*,

at 11 (Annenberg Pub. Policy Ctr. U. Pennsylvania) (2000) (indicating that over 50% of children ages 10-17 watched MTV each year from 1996 through 1999)); Viacom Form 10-K for the year ending Dec. 31, 1999 at I-3 ("MTV targets viewers from the ages of 12 to 34" and "The Box Network targets viewers from the ages of 12 to 34"). According to an interview with Curtis Gadson, Senior VP of Entertainment Programming for BET, the core BET audience is viewers between 12-34 and this group is its primary target. Barry Garron, *Novel Ideas*, Billboard/Hollywood Reporter, Apr. 25, 2000, S-10, at S-11.

86. *See* Appendix C.

87. *See* Appendix C, Tables A and B for a list of the programs monitored.

88. The Commission—s television monitoring data show that 47 ads for explicit content recordings ran during the eight weeks of these MTV programs. UMG ran 32 ads for *What's the Worst That Could Happen* Soundtrack, *Baby Boy* Soundtrack, *Rush Hour 2* Soundtrack, *Return of the Dragon*, *Take Off Your Pants and Jacket*, *Devil's Night*, *Concrete Law*, *First Born Second*, *The Reason*, and *Broken Silence* on: *Total Request Live*, *Jackass*, *Direct Effect*, *106th and Park*, and *WWF Smackdown*. BMG ran 10 ads for *The Violator Album 2.0*, *The Saga Continues*, and *Horrorscope* on: *106th and Park*, *Total Request Live*, and *Sunday Night Heat*. WEA ran five ads for *This Ain't A Game* on: *Total Request Live* and *106th and Park*. EMI ran two ads for *Tha Last Meal* on *106th and Park*.

89. The Commission-s-television monitoring data for the first airing of advertisements for explicit content recordings showed that BMG ran ads for explicit content recordings on *Daria* and *106th and Park*; EMI ran ads for explicit content recordings on *Direct Effect* and *106th and Park*; Sony Music ran ads for explicit content recordings on *Total Request Live* and *106th and Park*; UMG ran ads for explicit content recordings on *Total Request Live* and *106th and Park*; and WEA ran ads for explicit content recordings on *106th and Park*. *See* Appendix C, Section B.

90. *See* September 2000 Report, Section V.

91. The marketing documents submitted to the Commission discussed placing ads in numerous magazines that have a majority or substantial percentage of readers under 18, including: *Big Brother*, *Black Beat*, *Heckler*, *Hit Parader*, *Metal Edge*, *Right On!*, *Seventeen*, *Teen People*, *Thrasher*, *TransWorld Skateboarding*, and *Word Up*. *See* Appendix C, Tables G and I, for demographics for youth-oriented magazines.

92. *See* Appendix C, Table G, for a list of the publications.

93. The Commission examined advertisements for recordings placed in *CosmoGirl*, *Metal Edge*, *Right On!*, *Seventeen*, *Teen*, *Teen People*, *Thrasher*, and *YM*.

94. No ads for explicit content recordings were found in the issues of *CosmoGirl* or *Seventeen*. BMG ran ads in *Metal Edge* and *Right On!* EMI ran ads in *Right On!* and *Thrasher*. Sony Music ran ads in *Metal Edge* and *Thrasher*. UMG ran ads in *Metal Edge*, *Right On!*, *Teen*, *Teen*

People, and *Thrasher*. WEA ran ads in *Metal Edge*, *Right On!*, and *YM*.

95. *See* Appendix C, Section III for demographic information from Nielsen//NetRatings.

96. September 2000 Report at 29.

97. www.riaa.com/Parents-Advisory-5.cfm.

98. *See* April 2001 Report at 5-18. In February 2001, the RIAA informed the Commission that its members were focusing on compliance with the requirement that parental advisories appear in print and Internet advertising, but that because print advertising must be reserved far in advance, the complying print disclosures could take several months to appear. In March, the RIAA stated it was considering a recommendation that *all* advertising for explicit content recordings (*e.g.*, television, radio, and artist Internet sites) provide an advisory. *See* Letter from Mitch Glazier, Senior V.P., Recording Industry Ass—n of America, to FTC staff (undated but faxed Mar. 28, 2001) [hereinafter *RIAA March 2001 Letter*], at 4. In addition, the National Association of Recording Merchandisers ("NARM") supported formulating a recommendation for the inclusion of a standardized parental advisory in radio advertising for explicit content recordings. *See* Letter from Pamela Horovitz, President, NARM, to FTC staff (Mar. 21, 2001) at 2.

99. RIAA June 28, 2001 Memo on Parental Advisory Implementation Efforts (on file with the Commission). *See also* Statement of Hilary B. Rosen, President and CEO, Recording Industry Association of America, Senate Committee on Governmental Affairs, July 25, 2001.

100. *Id.*

101. *Id.*

102. *See* www.riaa.com.

103. All of the companies held meetings with their senior personnel from the music labels, as well as with the RIAA, in their efforts to implement the Revised Guidelines. Two of the companies have appointed employees in charge of compliance for the company. One company has prepared a "Parental Advisory Marketing Compliance Worksheet," a checklist to ensure that advertising for explicit content recordings complies with the RIAA and company-approved guidelines; another company has issued a Parental Guidelines Implementation Policy that provides standardized, detailed guidelines to assist compliance efforts. All companies have participated in meetings with the RIAA to consider how the voluntary Guidelines might be expanded to provide parents with further information about music.

One company pointed out that "while there may be some unavoidable lag time before the fruits of these efforts can be seen (due to the fact that the marketing plans and promotion of current albums have long been in place), this does not diminish the company's commitment to compliance.

104. All of the companies require that television spots for labeled albums contain the parental advisory label or text regarding the explicit content. One company requires radio ads for labeled albums to contain a clear tagline ˜Parental Advisory, Explicit Content. Edited Version also available™ (ifn fact an edited version is available); another company is considering a similar disclosure: ˜Parental Advisory › Contains Explicit Content™for inclusion in its radio ads.

The companies also have developed written procedures for the clear and consistent use of a parental advisory in print advertising for explicit content recordings. One company specifies that the advisory must be ˜clear and conspicuous™ inprint ads. The other two companies adopted specific size requirements for the parental advisory label or advisory text in their print advertising. All the companies require the advisory label or advisory text to appear in all outdoor or ˜street™ advertising (*e.g.*, billboards, bus shelters, and smaller posters) that mention a labeled album or utilize its artwork. Two companies require an advisory at point of purchase and other retail marketing materials.

The companies also require clear advisories in online promotions. One company stated that artist Web sites that it owns or controls will include a parental advisory on pages that include cover art images or sound samples.

105. One company requires placing a link to the parentalguide.org Web site on the home page of all recording label Web sites that it owns or controls and requires the statement ˜To learn more about parental advisory program, go to www.parentalguide.org™n print advertising of a certain size. Another company has placed a link to parentalguide.org on the footer of each page, linking it to the RIAA-s-Web site. The third company requires ˜all label sites are to include a link to parentalguide.org which is the website explaining the parental advisory program.™

106. Unit sales information provided to the Commission for twelve labeled recordings indicate that the recording studios did not produce edited versions for two of the recordings. For nine of the ten recordings sold in both explicit and edited formats, the explicit version accounted for 85% or more of the sales. Unit sales information provided to the Commission for the September 2000 Report also indicated that explicit versions accounted for the vast majority of sales, ranging from a high of 99.5% to a low of 78% of sales as compared to the edited versions. For 19 of the 25 recordings (78%) for which the Commission had unit sales information, sales of the explicit version accounted for 90% or more of total unit sales. *See* September 2000 Report at note 139.

107. One company will notify its retail partners of all current labeled releases to enable retailer web site compliance and in the future will only send to retailers artwork that displays an advisory. One company also has enhanced its Web site for business partners where explicit content is flagged and an advisory made available.

108. This policy states that retailers will not be eligible for reimbursement for ads that do not display the advisory.

109. *CosmoGirl*, *Metal Edge*, *Right On*, *Rolling Stone*, *Spin*, *Seventeen*, *Teen*, *Teen People*, *Thrasher*, *Vibe*, and *YM*.

110. BMG ran 17 ads for explicit content recordings: 12 with no advisory, three with an unreadable advisory, and two with a clear advisory. EMI ran six ads for explicit content recordings: four with no advisory, one with an unreadable advisory, and one with a clear advisory. Sony Music ran three ads for explicit content recordings: all with clear advisories. UMG ran 37 ads for explicit content recordings: 32 with no advisory and five with a clear advisory. WEA ran 13 ads for explicit content recordings: ten with no advisory and three with a clear advisory. Independent recording labels ran 19 ads for explicit content recordings: 16 with no advisory and three with an unreadable advisory. Music retailers ran 16 ads for different explicit content recordings: six with no advisory, seven with an unreadable advisory, and three with a clear advisory.

111. Advertisements for the following recordings contained clear and conspicuous disclosures: *One Twelve Part III*, *Instructions* (video), *The Saga Continues*, *Thug On Da Line*, *Project English*, *The Very Best of DAS EFX*, *Break The Cycle* (retailer ad), *Greatest Fits*, *Iowa*, *Tweekend*, *God Hates Us All*, *Strictly 4 Da Streets*, *What's The Worst That Could Happen* Soundtrack (retailer ad), *Miss E ... So Addictive* (retailer ad), *This Ain't A Game*, *Wu Chronicles Chapter II*.

112. The Commission selected the Web sites based on a listing of the top 200 albums as ranked by Billboard on June 16, 2001. The official site was the artist, band, recording label, or recording company site.

113. The RIAA states that it has clarified to its members that "the parental advisory logo and any accompanying language indicating that an edited version is available used in consumer print advertising should be –clear and conspicuous.—™ RIA March 2001 Letter at 3.

114. Although several recording company sites provide an advisory, many of the online advisories are still provided by retail sites. Many of the recording sites reviewed allowed a consumer to purchase an album by linking directly to a specific page on a retail site. It is these retail Web sites that often contain the improved disclosures.

115. *See* www.riaa.com/Parents-Advisory-5.cfm.

116. Best Buy provided the disclosure "parental advisory™ near the picture of the cover art, but not throughout the purchasing process. CDNow at times used the terms "explicit™ and "edited™ next to the album cover art, but in other cases either provided no information regarding an album's explicit content or provided this information buried several screens down, after the consumer could purchase, read about, and listen to clips from the album. Tower Records would at times use the disclosure "explicit™ but more often provided the cryptic abbreviation "PA™ throughout the purchasing process.

117. *See* September 2000 Report at 36.

118. *See* Appendix B.

119. *Id.* The survey collected data on whether the shoppers *saw* any sign, poster, or other information about the labeling system or the retailer—s enforcement policy, not whether such information was actually posted. The NARM recently told the Commission that music retailers are renewing efforts to ensure that information about the advisory is posted in stores.

120. September 2000 Report at 45.

121. The industry-s Advertising Code of Conduct (~AdCode™) (on file with the Commission) prohibits the marketing of games to children under the age designated in the rating. The AdCode recently was revised, and some of the revised provisions became effective March 14, 2001. Other provisions, such as the guidelines for marketing M-rated games in television, print, and Internet media, became effective in November 2001. In this report, citations to ~AdCode™ refer to the unrevised AdCode provisions that were in effect at the time the Commission compiled information for this report. Where relevant, the revised AdCode provisions are referred to and cited as ~Revised AdCode.™

122. IDSA explained the different percentages used for print and television advertising as follows:

> The distinction between the 45% under 17 audience allowed for print publications and the 35% under 17 audience allowed for TV advertising recognizes that the most effective and in some cases the **only** cost-effective way to reach **adult game enthusiasts** is through magazines that have a substantial adult readership along with some younger readers. The 35% demographic for TV advertising is utilized because TV is a mass medium and does not present the same issues when seeking to reach an adult audience.

See Guidelines Addressing Marketing of Mature Rated Games to Persons Under 17, attached to Letter from Douglas Lowenstein, President, IDSA, to FTC staff (Mar. 28, 2001) [hereinafter *M-Rated Game Ad Guides*] (on file with the Commission) (emphasis in original).

The Guidelines also set a 45% under-17 audience limit for advertising on Internet sites, and oblicate game publishers who license third parties to sell action figures and other products based on their M-rated games to require that packaging for the products include the following statement: ~This [state item] is based on a Mature rated video game.™ *Id.*

As noted previously, television audience demographic data cited in this report and Appendix C indicate the programs— under-18 audience share. The ESRB—s self-regulatory rating system only addresses the suitability of content of M-rated games for persons under-17. Because the ESRB—s advertising placement guidelines for television are just coming into effect, it is not clear the industry will use demographic data showing programs–under-17 audience share or the under-18 audience share.

123. *See* April 2001 Report at 21.

124. The revised AdCode calls for a 45% threshold for print advertising. Revised AdCode, *supra* note 121, at 28.

125. The marketing plans for five games indicated that radio promotions had been planned. The Commission was not provided with sufficient information › namely, radio stations and daypart advertising times › to determine whether these promotions were targeted to a substantial under-17 audience.

126. The media plan for one of these games went through numerous iterations. The first version indicated ˜M12-17™as the primary target and listed teen-popular programming such as *That 70's Show, Malcolm in the Middle, Simpsons, Titus, Smackdown, Xena,* and programming on MTV. The fifth version, which post-dated the Commission—s September 2000 Report, still listed M12-17 as the primary target, but shows like *Malcolm in the Middle, Simpsons, King of the Hill,* and *Titus* no longer appeared on the plan. The seventh version listed the primary target as ˜M18-34,™ with no mention of M12-17. However, with the exception of XFL Football and the Fox show *Freakylinks*, the shows listed on the plan were identical to the shows on the previous plans which had listed M12-17 as the primary target.

127. Revised AdCode, *supra* note 121, at 17.

128. Although plans for four of these console games predate the September 2000 Report, the Commission confirmed that ads for all of these games ran in the media outlined in the marketing plans.

129. In preparing the chart, Rating Pending (˜RP™) ads wereincluded in the rating category that the game later received. The IDSA—sAdCode provides that if ˜a title has a –Rating Pending— status, companies must use their best efforts to place ads for that title only in publications or outlets whose audiences would be appropriate for the content portrayed in the title.™ Revised AdCode, *supra* note 121, at 15. ˜Such efforts should be based on the companies—good faith expectations regarding the likely rating.™*Id.* The chart does not include 24 ads for games that as of October 2001 had not yet received their final rating.

130. A readership study commissioned by *GamePro* revealed that more than 45% of *GamePro* subscribers are under age 17, but that less than 45% of *GamePro* newsstand purchasers are under age 17. *GamePro* informed the Commission that when these subscribership and newsstand demographics were combined, less than 45% of all *GamePro* readers were under age 17. In response, *GamePro* will create two distinct versions of its magazine › one for subscribers that has no ads for M-rated games, and one for the newsstand that contains M-rated game ads.

131. The April issue of *Electronic Gaming Monthly* carried four advertisements for M-rated games. The Preamble to the new M-rated Game Ad Guides, which have not yet gone into full effect, expressly notes that industry members are free to adopt stricter guidelines for their own marketing practices. *See* M-Rated Game Ad Guides, *supra* note 122.

132. The Commission examined Internet audience statistics over a three month period, May through July 2001. According to Nielsen//NetRatings data, 2- to 17-year-olds comprised about 20% of the general Internet population during this time period. In the chart below, percentages indicate the portion of the Web site—s audince between age two and 17, unless a different age range is indicated in parentheses.

Web Site	May 2001 (2-17)	June 2001	July 2001
avault.com	28%	26% (12-17)	20% (12-17)
cdmag.com	32%	N/A	N/A
gamespot.com	33%	31%	38%
gamespy.com	32%	36%	31%
ign.com	43%	46%	47%
ugo.com	23%	39%	33%

A plan for a T-rated game, which was targeted to boys 12 to 17, specifically noted that ign.com provides ˜[s]trong delivery™against that target audience.

133. Revised AdCode, *supra* note 121, at 28.

134. AdCode, *supra* note 121, at VII.A.

135. The Revised AdCode was effective as of March 14, 2001. Revised AdCode, *supra* note 121, at 5.

136. For M-rated games, the required voice-over is now ˜rated Mature,™n place of ˜rated M.™

137. The Commission-s-limited April review found that most print ads contained the ratings and the content descriptors as specified by the ESRB, although a small percent (15%) failed to display the required disclosures. A spot review of television programs showed broad compliance with the voice-over requirement. In contrast, the September 2000 Report found numerous examples of ads without any rating information.

138. Revised AdCode, *supra* note 121, at 17-18. The required voice-over, ˜Rated M for Mature,™applies to television spots longer than 15 seconds. *Id.* For spots 15 seconds or less, the required voice-over is shortened to ˜Rated Mature.™ *Id.* ESRB requires the rating icon to be 22 scan lines in size. *Id.*

139. These ads either: a) displayed no rating icon at all; b) displayed no descriptors; c) left off a descriptor assigned to the game; d) changed the wording of the descriptor in a way that understates the level of violence, sex, or bad language in the game; e) for RP ads, left off the ESRB-required box containing the phone number and Web site address for the ESRB to check if

the game had subsequently received a rating; or f) used rating icons that were substantially smaller than the size required by ESRB regulations. These regulations do not require advertisements for multiple titles to include descriptors (although the Commission recommended that all ads display both the rating and the descriptors). Those multiple title ads were counted as compliant if a properly sized rating icon, *e.g.*, E-T, appeared in the ad.

140. A company was considered in substantial compliance where the ad used a rating icon that was slightly smaller than the size required by ESRB regulations. Even with the smaller size, these icons were clear and easily noticed and read.

141. Two exceptions were Eidos (with several ads for two T-rated games that omitted the descriptors and used rating icons 40% smaller than required by the AdCode) and Konami (with several ads that used rating icons 40% smaller than required by the AdCode). It should be noted that Eidos ads in the August and September issues displayed the descriptors and used properly sized rating icons.

142. In July of 2001, ESRB notified publishers of an increase in the size of the rating icon for print ads, that must be used by the February 2002 issues of print publications. Memoranda from Lisa Schnapp to ESRB Participating Companies, *Revisions to Advertising Code of Conduct* (July 26, 2001) (on file with the Commission).

143. Take 2's poster did display the game's rating, but the others failed to provide any rating information. It is not clear why these companies failed to treat the posters as ads requiring rating and content descriptors. Arguably they fall into the category of "promotional –give-aways–™(key chains, T-shirts, hats, etc.) that are not subject to the disclosure requirements of the AdCode, although posters, unlike these other items, can easily display the rating information.

144. Instead, these advertisers almost always used the old RP icon that includes that information under the RP designation, but in very small, almost unreadable, print.

145. According to the Interactive Entertainment Merchants Association ("IEMA™), which represents 19 of the top 20 retail companies in the video and computer gaming sector (K-B Toys is not a member), all member companies are required to make their best efforts to display educational information about the ESRB system, and are "encouraged"™to enforce the rating system. The IDSA and the ESRB also have asked retailers to adopt programs that restrict children's access to M-rated games. A number of the major retailers have done so, including Toys "R" Us, Kmart, Wal-Mart, Target, Circuit City, Staples and CompUSA.

146. Chips & Bits mail-order ads feature dozens of games. No rating information is provided for most of the games listed in these ads. For a few games, the ads display the games' cover art, which usually shows the ESRB rating icon.

147. CompUSA also appears to be increasing the size of the rating icon on the clip art for M-rated games featured in its Sunday inserts.

148. AdCode at VII.B, D. The provision for online sales can be difficult to apply because there may be several Web pages where game information, such as price, is provided. For purposes of this Report, the Commission counted a site as compliant as long as rating information appeared on a Web page at some point during the purchase process. The Revised AdCode, which will be fully enforced in November 2001, states that the icon and descriptors must appear "[o]n any page where a game product can be purchased.™Revised AdCode, *supra* note 121, at 29. Because a game often can be purchased from several different pages, the Revised AdCode would appear to require multiple disclosures.

149. AdCode at VIII.C. The Revised AdCode requires the display of both the rating icon and content descriptors prior to download of the demo. Revised AdCode, *supra* note 121, at 29.

150. In the April 2001 Report, the Commission commended and criticized a number of sites for the manner in which they displayed rating information. The good practices appear to be continuing, but the poor practices either remain unchanged or have worsened.

With regard to good practices:

II The sites for Tecmo-s *Deception III: Dark Delusion*, Capcom-s *Onimusha Warlords*, and Acclaim-s *Turok 3: Shadow of Oblivion* continue to display large rating icons.

II Since the April 2001 Report, the sites for Sierra-s *Gunman Chronicles* and Infogrames—*Koudelka* have made the ESRB rating icon clear and conspicuous. The icon on the *Gunman* site also links directly to the ESRB site.

With regard to poor practices:

II The *Turok 3* Web site remained unchanged since the April 2001 Report. It still simultaneously warns visitors that they must be 17 or older to view game clips and entices them to view the clips by clicking a hyperlink labeled "Take me to the Gore.™

II The April 2001 Report noted that content descriptors on two sites were unlikely to be seen by viewers › Sony-s site for *Syphon Filter 2*, which had placed the descriptors below the screen break, and Electronic Arts–*Undying* site, which required the visitor to place the cursor over the rating icon to view the descriptors while on the site—s houpage. Neither site has improved in this respect, although, as noted below, the *Undying* site also demonstrated several good practices, including the prominent display of descriptors during the purchase process. In fact, the content descriptors appear to have been removed from the *Syphon Filter 2* site altogether.

151. Three of the five game sites that did not display a "Mature™ rating were foreign. *Silent Hill 2* and *Illbleed* both have Japanese Web sites, and *Typing of the Dead* is published by Empire Interactive Europe Ltd.

152. In the context of online disclosures, the Commission has advised against Web page formats that discourage scrolling, such as several inches of blank space between the end of the text and

the bottom of the screen or putting a lot of unrelated information › either words or graphics › between a claim and a disclosure. *See* Federal Trade Commission Business Education Publication, *Dot Com Disclosures: Information about Online Advertising* (May 2000), at 7.

153. Take 2 Interactive's *Green Berets* site had very prominent descriptors, displayed in large black letters inside a white box that is larger than, and next to, the rating icon.

154. In the context of hyperlink disclosures, the Commission has recommended that the hyperlink be labeled to convey the importance, nature, and relevance of the information to which it links. A hyperlink should give consumers a reason to click on it. *See* Dot Com Disclosures, *supra* note 152, at 8. In a similar vein, consumers should be given a reason to roll the mouse over the rating icon › *i.e.*, they should be provided a prominent textual cue that this action leads to the content descriptors.

155. Eight of the 15 sites had both a trailer and demo available. Seven sites had just the trailer, and one site had just the demo. Two of the sites › *Alice* and *Clive Barker's Undying* › provided no rating icon or content descriptors, but did state the demo and trailer were "suitable for mature viewers™or words to that effect, and therefore were counted as compliant for purposes of this Report. The site for one of the games contained a blurry rating icon; this site for the game, *Fallout Tactics*, also was counted as compliant. Although the Revised AdCode is not yet fully effective, the site for one game, *Gunmen Chronicles*, provided the rating icon and content descriptors before the demo or trailer could be downloaded or viewed.

156. This age-screening device is by no means fool-proof. Visitors need only hit the "back™ button on their browsers and input a different age to access the demo.

157. For purposes of the summary chart of AdCode Issues presented in the text, a site was deemed to have provided rating information where game information, such as price, was provided so long as a visitor to the site would encounter the rating information at some point in the purchase process. For example, the sites reviewed for this Report often provided rating information on a product specific page which usually described the game, stated a price, and invited the visitor to purchase the game by clicking on a hyperlink labeled "buy it™or "buy it now.™Upon clicking the hyperlink, the visitor would be taken through a series of purchase and checkout pages that would not necessarily provide rating information. Because the visitor would have encountered rating information at the initial phase of the purchase process, such sites were deemed to have provided rating information on the appropriate Web page.

158. Sites for games published by Electronic Arts (including *Quake III, Alice*, and *Clive Barker's Undying*) consistently displayed prominent rating icons and content descriptors on the pages through which visitors navigate when making an online purchase. At the initial purchase page, the "Mature™rating icon was large and served as a link to the ESRB Web page that defined the ratings. In contrast, the site for Valusoft games (including *CIA Operative, Vietnam 2*, and *WWII: Normandy*) gave no indication of the rating or content descriptors during the purchase process.

159. These five games were Rockstar Games—*Max Payne*, Sony—*Syphon Filter 2* and *Extermination*, and Electronic Arts—*Alice* and *Clive Barker's Undying*. The warnings preceding the two Sony sites were particularly prominent, featuring a large rating icon and box with content descriptors and requiring visitors to certify that they are 17 or older before entering the sites.

160. These games were Capcom—*Onimusha: Warlords* and *Heavy Metal: Geomatrix* and Blizzard Entertainment—*Diablo II*.

161. For the September 2000 Report, the Commission—s spot-check of five online retailers— Web sites revealed that the sites generally indicated that the product had a Mature rating in a place the user would likely see it, either by displaying the "M" icon or the word "Mature." Only one game retailer provided content descriptors. For the April 2001 Report, the Commission—s spot-check of six online electronic games retailers—sites found that most displayed a game—s rating on the product specific page, but only a few provided descriptors for the games surveyed.

162. Amazon.com and ToysRUs.com use the same Amazon.com site. For the purpose of this report, they will be referred to separately.

163. This percentage could be lower, depending on how a visitor locates a game on a retail site. If, instead of searching a site for a particular game title, a visitor searches for a list of all games sold for a particular game system (*e.g.*, PC, Playstation 2) and classified under a particular genre (*e.g.*, Action/Adventure, Shooter), the visitor usually is taken to a "browsing" page that displays a list of game titles. In the review conducted for this Report, none of the retailers displayed ratings on their checkout pages, while all of the retailers allowed visitors to go directly from the browsing pages to the checkout pages, bypassing the product-specific pages where rating information usually was provided. Thus, a visitor to a retail site like BestBuy.com searching for a game by category › as opposed to by the specific title › could purchase a game without ever having to view a game rating.

164. BestBuy.com was the only retailer that did not use the ESRB rating icon, instead displaying the words "ESRB Rating: M = Mature" in the text next to the cover art for the game.

165. Amazon.com and ToysRUs.com had links to rating information from their browsing pages as well. None of the sites imposed an age-based restriction on purchasers of M-rated games.

166. However, the industry could improve its practices by requiring the disclosure of content descriptors in television advertising (now done routinely by advertisers of motion pictures), by requiring that descriptors be more clearly disclosed on industry Web sites, and by increasing compliance with new disclosure requirements when games are not yet rated.

167. *See supra* note 145.

168. This also suggests some improvement since the Commission—s September 2000 Report, where the Commission found that 81% of the underaged shoppers were able to purchase an M-rated game at the four retailers that had adopted the "Commitment to Parents" program at the

time of the Commission—s slip.

169. In addition to permitting credit card purchases, one other retailer permitted purchases by gift card, and two other retailers permitted purchases by gift card, personal check, or money order, potentially making it easier for children under 17 to make an online purchase of an M-rated game.

170. Although closely connected with the ToysRUs.com Web site, Amazon.com did not offer this intermediate stop in the "Kid-Safe Zone.™

171. *See* Appendix C (identifying programs monitored by the Commission). The monitored programs had a substantial percentage of young viewers, or had a large number of youth viewers.

CONCURRING STATEMENT OF COMMISSIONER ORSON SWINDLE CONCERNING THE FEDERAL TRADE COMMISSION'S SECOND FOLLOW-UP REPORT TO THE CONGRESS ON THE MARKETING OF VIOLENT ENTERTAINMENT TO CHILDREN

I applaud and support the Commission-s third report on the marketing of violent entertainment to children. I write separately to emphasize the lack of serious attention given by the music industry and by retailers to the Commission—s recommendations in its two earlier reports. In response to these earlier reports, the movie and electronic game industries have made real progress. In contrast, the music industry and theaters, stores, and other retail outlets that sell R-rated movies, M-rated games, or explicit-content labeled music to children have been intransigent. In my view, the music industry and retailers will require continued scrutiny and pressure if they are to be persuaded to improve.

At the outset, I want to make clear that what is at issue here is not imposing any government restriction of the content of movies, music, or video games. Such restrictions, of course, would raise serious First Amendment concerns. Rather, the issue has been whether the government can persuade the movie, music, and electronic game industries to discontinue marketing to children products that they themselves have rated as having content potentially inappropriate for children.

In response to the Commission—s two earlier reports, the movie and electronic game industries have taken significant steps forward. I applaud the cooperation and progress demonstrated by those industries. They are leading the way to better standards and better conduct that parents will truly appreciate. Although I cannot say their success is complete, I am confident that we will see far better practices from them in the future.

On the other hand, the music industry has been obdurate. Industry representatives have said that the industry should not have to rate its music because its audible nature distinguishes it from visual media. Parents–eoncerns about their children-s exposure to violence are no less important when a violent message is communicated orally. An oral message can be as effective as a visual one, as the power of propaganda has historically proven.

Although the industry has established a label for explicit content, it has steadfastly argued that

it has the absolute right to market music to children regardless of the nature of the content. I think that it is hypocritical for the music industry to claim that it is helping parents by placing a parental advisory label on a CD, while at the same time undermining parents by aggressively marketing the same CD to children. As it is, parents are challenged to protect their children from inappropriate material and impart values that will measure up to the test of time in a complicated world. Marketing violent entertainment directly to children only serves to frustrate parents—efforts.

Surely, the music industry ought to be able to do better. The movie industry has demonstrated that an industry can establish an age-based and practical rating system and can effectively restrict advertising to children if corporate executives are committed to making the system work. Given that in the music industry -- like the movie industry -- a small number of companies controls the vast majority of U.S. distribution, a commitment to change by the executives associated with relatively few companies could make a big difference.

Retailers that sell movie tickets, music, and video games are part of the problem, too. Effective enforcement at the retail level is necessary to ensure that age-related ratings are not circumvented or undermined. There obviously must be significant improvements in enforcement of ratings at the retail level.

After over 12 months of scrutiny, reports, and numerous recommendations, the music industry and retailers have chosen to do next to nothing. I am deeply skeptical that the government could or should try to compel industry to improve its performance. But I also do not think that we should merely identify the problem here and then walk away. Instead, we -- the Congress, the Commission, parents, and the general public -- must persuade the music industry and retailers to change their behavior to solve the problem. The time for change is now.

Appendix A

SELF-REGULATORY RATING SYSTEMS

This Appendix provides a brief overview of the ratings and labels applied by the self-regulatory systems of the motion picture, music recording, and electronic games industries.[1]

I. MOTION PICTURES

Since 1968, the motion picture industry has had in place a formal rating system for motion pictures. The current categories for film ratings, as defined by the Motion Picture Association of America ("MPAA™"), follow:

G General Audiences - All ages admitted.

This signifies that the film rated contains nothing most parents will consider offensive for even their youngest children to see or hear. Nudity, sex scenes, and scenes of drug use are absent; violence is minimal; snippets of dialogue may go beyond polite conversation but do not go beyond common everyday expressions.

PG Parental Guidance Suggested - Some material may not be suitable for children.

This signifies that the film rated may contain some material parents might not like to expose to their young children - material that will clearly need to be examined or inquired about before children are allowed to attend the film. Explicit sex scenes and scenes of drug use are absent; nudity, if present, is seen only briefly, horror and violence do not exceed moderate levels.

PG-13 Parents Strongly Cautioned - Some material may be inappropriate for children under 13.

This signifies that the film rated may be inappropriate for pre-teens. Parents should be especially careful about letting their younger children attend. Rough or persistent violence is

absent; sexually-oriented nudity is generally absent; some scenes of drug use may be seen; one use of the harsher sexually derived words may be heard.

R Restricted - Under 17 requires accompanying parent or adult guardian (age varies in some locations).

This signifies that the rating board has concluded that the film rated contains some adult material. Parents are urged to learn more about the film before taking their children to see it. An R may be assigned due to, among other things, a film's use of language, theme, violence, sex or its portrayal of drug use.

NC-17 No one 17 and Under Admitted.

This signifies that the rating board believes that most American parents would feel that the film is patently adult and that children age 17 and under should not be admitted to it. The film may contain explicit sex scenes, an accumulation of sexually-oriented language, or scenes of excessive violence. The NC-17 designation does not, however, signify that the rated film is obscene or pornographic.[2]

Each film assigned a rating other than G also receives a brief explanation for the film-s-rating, *e.g.*, ˜Rated R for terror, violence and language,™ or ˜Rated PG-13 forintense sci-fi violence, some sexuality and brief nudity.™

II. MUSIC RECORDINGS

The Recording Industry Association of America (˜RIAA™)created a parental advisory program in 1985. Under the program, music recordings that contain explicit lyrics, including strong language or graphic references to violence, sex, or substance abuse, are identified with a parental advisory label. The RIAA describes the parental advisory label as a tool for record companies to use to alert parents to explicit lyrics.[3] The decision to label a recording is made by individual record companies and their artists. RIAA members, as well as non-member companies, use the advisory.

The parental advisory label is black and white, measures 1" x 5/8" and says "Parental Advisory, Explicit Content."

The recording industry labeling program does not provide reasons for the advisory label or "content descriptors" indicating the nature or the amount of the explicit content (*e.g.*, strong language or graphic references to violence, sex, or substance abuse).[4] Instead, one advisory covers a broad spectrum of content, including violence and/or sex. Also, it is not an age-based system, and the label does not specify the age groups for which an explicit-content labeled recording may be inappropriate.

III. ELECTRONIC GAMES

The Interactive Digital Software Association ("IDSA") Entertainment Software Rating Board ("ESRB") system has rated electronic games since 1994. Currently, the system rates game titles according to five age-based categories: (1) Early Childhood, or "EC"; (2) Everyone, or "E"; (3) Teen, or "T"; (4) Mature, or "M"; and (5) Adults Only, or "AO." There is also a Rating Pending category ("RP") to indicate that a game has been submitted to, but not yet rated by, the ESRB.

The current rating icons appear as follows:[7]

As in the motion picture rating system, a descriptive phrase may be assigned to the letter rating to indicate content that might be of concern to parents, such as language, sexual themes, or violence. Current descriptors reflecting violent content include "Animated Blood," "Blood," "Blood and Gore," "Comic Mischief," "Mild Violence," and "Violence."

ENDNOTES

1. *See* September 2000 Report, Appendix D, for a detailed history of the entertainment media industries–self-regulatory systems.

2. *See* www.filmratings.com (visited October 29, 2001).

3. *See* Memorandum from the RIAA to the Federal Trade Commission, *The Voluntary Parental Advisory Program: What It Is and What It Is Not* (July 2000), at 8(on file with the Commission).

4. The parental advisory label may appear on an album with only a few expletives and no other explicit content, as well as on an album with repeated references to graphic violence and/or sex.

5. Before January 1, 1998, the Everyone category was called the ˜Kids to Adult™or ˜K-A™ category. ESRB *Video & Computer Games Ratings, About Ratings and Descriptors.* www.esrb.org/esrb_about.asp (visited October 29, 2001).

6. *Id.*

7. The ESRB defines the rating categories as follows:

- *EC* titles have ˜content that may be suitable for children ages three and older and should not contain any material that parents would find inappropriate.™

- *E* titles have ˜content that may be suitable for persons ages six and older. These titles will appeal to people of many ages and tastes. . . . They may contain minimal violence, some comic mischief (for example, slapstick comedy), or some crude language.™

- *T* titles have ˜content that may be suitable for persons ages 13 and older. Titles in this category may contain violent content, mild or strong language, and/or suggestive themes.™

- *M* titles have ˜content that may be suitable for persons ages 17 and older. These products may include more intense violence or language than products in the Teen category. In addition, these titles may also include mature sexual themes.™

- *AO* titles have ˜content suitable only for adults. These products may include graphic depictions of sex and/or violence. Adults Only products are not intended to be sold or rented to persons under the age of 18.™

- *RP* titles are awaiting a final rating from the ESRB.

Id.

8. This descriptor means that the game contains ˜[a]nimated/pixilated or cartoon like depictions of blood.™*Id.*

9. This descriptor means that the game contains ˜depictions of blood.™ *Id.*

10. This descriptor means that the game contains ˜depictions of mutilation or dismemberment of body parts.™ *Id.*

11. This descriptor means that the game ˜[c]ontains scenes depicting activities characterized as slapstick or gross vulgar humor.™ *Id.*

12. This descriptor means that the game contains ˜[s]cenes or activities, which depict characters in unsafe and/or violent situations.™ *Id.*

13. This descriptor means that the game contains ˜[s]cenes or activities, which involve violent acts.™ *Id.* Since the publication of the September 2000 Report, the ESRB has discontinued the use of other violence content descriptors, including ˜Mild Animated Violence,™ Mild Realistic Violence,™ Animated Violence,™ Realistic Violence,™ Animated Blood and Gore,™ Realistic Blood and Gore,™ and ˜Realistic Blood,™ although they may still be on games that are currently being sold or promoted. *Id.*

Appendix B

MYSTERY SHOPPER SURVEY

This Appendix sets out available data on the extent to which the entertainment industries restrict children—s access to R-rated movies, explicit-labeled music recordings and M-rated games at the retail level. It is the retailers who implement any sales restrictions included in the self-regulatory rating and labeling programs.[1]

The 2000 Mystery Shopper Survey and Industry Response

For the September 2000 Report, the Commission conducted a nationwide undercover survey of stores and theaters, or "mystery shopper™ study, to collect data on the extent to which retailers prevent children from purchasing entertainment products that have been rated or labeled by entertainment producers as potentially inappropriate for children. The Commission, through a contractor, recruited 13- to 16-year-olds across the country to attempt, unaccompanied by a parent, to purchase movie tickets, music, or electronic games at 1,158 theaters and stores.

The 2000 survey found that 85% of the teenage shoppers were able to buy M-rated games, and 85% were able to buy explicit-labeled recordings. Less than 17% of the music and game store clerks (16% and 15%, respectively) asked the ages of the children attempting to purchase the products. Movie theaters were much more likely to enforce age-based restrictions: slightly more than half (54%) the shoppers were refused admission to R-rated movies, and almost half (48%) of the cashiers asked the shopper-s age.

In response to the September 2000 Report, the National Association of Theatre Owners ("NATO™") adopted a twelve-point initiative that, among other things, reaffirmed its existing ID-check policy for R and NC-17 films and promised to take steps to encourage theaters to enforce the rating system. In addition, NATO member theaters appointed compliance officers to strengthen enforcement of the program.

For electronic games, the International Digital Software Association ("IDSA™) encouraged retailers to consider adopting a program not to sell M-rated games to persons under 17. To date, Toys –R–Us, Kmart, Wal-Mart, Target, Circuit City, Staples, and CompUSA have adopted

policies restricting sales to those under 17.[2] The Video Software Dealers Association (˜VSDA™) designated the month of June 2001 as ˜Ratings Awareness Month,™ and encouraged retailers to review their ratings education and enforcement polices to ensure compliance with VSDA-s standard that R-rated movies and M-rated video games not be sold or rented to persons under age 17 without parental consent.[3] VSDA also recently started a program to certify retailers that comply with this standard.[4]

For music recordings, the industry-s labeling program provides no age-based guidance, and the decision to restrict sales based on age is left to the retailer-s discretion.[5]

The 2001 Mystery Shopper Survey Methodology

To assess changes in sales practices at the cash register and box office since the September 2000 Report, the Commission conducted a second ˜mystery shopper™ survey. Using the same contractor, Second to None, the Commission recruited 13- to 16-year-olds across the country to visit 900 theaters and stores selling entertainment products. During July and August 2001, the shoppers attempted to purchase 300 tickets to R-rated movies, 300 explicit-content labeled music recordings, and 300 ˜Mature™ or M-rated electronic games.

The contractor recruited ˜mystery shoppers™ from 46 states and the District of Columbia.[6] Each teenage shopper visited one retail location for one or more of the entertainment products[7] and attempted to purchase either a ticket to an R-rated movie, an explicit-content labeled CD, or an M-rated electronic game.[8] Parents transported the children to the store or theater but were instructed not to accompany the children during the transaction. The contractor required shoppers to submit proof of age and verification for completed purchases by submission of a receipt.[9] About half of the shoppers (49%) were male; half (50%) were 13 or 14 years of age, and half were 15 or 16.

After the visit, the shopper completed a questionnaire on the contractor—s proprietary Web site.[10] The questionnaires focused on three substantive questions:

1. Was there a sign, poster, or other information to inform customers of the rating/advisory system or the store/theater-s policy on rating/advisory enforcement?

2. Was the child able to buy the product or admission ticket?

3. Did the cashier or clerk ask the child—s agebfore purchase?

The results of the survey are reported in Table 1 below.

Table 1: Total Frequencies and Percentages of Yes and No Responses to Each of Questions 1, 2, and 3 for Each Product Line.

Product		Movies		Music		Games	
		Shoppers (#)	Percent	Shoppers (#)	Percent	Shoppers (#)	Percent
Q1	NO	123	41	265	88	223	74
Was rating information posted?	YES	177	59	35	12	77	26
Q2	NO	157	52	31	10	67	22
Was the child able to make a purchase?	YES	143	48	269	90	233	78
Q3	NO	183	61	270	90	238	79
Did an employee ask the child's age?	YES	117	39	30	10	62	21

As detailed below, the data show that theaters, more consistently than game and music retailers, displayed rating information, asked young shoppers their ages, and restricted purchases. The data also show that music retailers were the least likely to provide information, check shoppers— agesand restrict purchases. The electronic game retailers improved their performance from last year in all three areas, but remained well below the performance levels of the movie theaters.

C. Availability of Rating Information at Stores and Theaters

At theaters, 59% of the shoppers reported seeing posters, signs, or other information about the rating system. At electronic game retailers, the figure was 26%, and at music retailers, 12%.[11] The improvement of the game retailers from the prior survey was the only statistically significant

change in this area.[12]

D. Purchase Success and Age-Check Data

Like last year's survey, the data show that theaters have the best record of the three industries in limiting sales to children under 17. Over half of theaters (52%) refused to sell the shoppers tickets to R-rated films.[13] Game retailers made some progress since the last survey, although a high percentage (78%) of purchase attempts still were successful.[14] Music retailers' practices had not changed; 90% of purchase attempts for explicit-labeled recordings were successful.[15] As noted earlier, sales restrictions are not part of the music recording parental advisory labeling system but individual retailers may adopt policies on their own initiative.

The extent to which theaters and music retailers checked shoppers' ages declined from the 2000 survey,[16] although this decline did not translate into more success by the shoppers in attempting to purchase movie tickets or music. The extent to which game retailers checked the ages of the shoppers increased to 21% from 15% in the earlier survey.[17]

E. Age, Gender, and Major Chain Comparisons

As one would expect, older shoppers were more successful in purchasing a ticket to an R-rated movie or an electronic game than younger shoppers. Shoppers' success in purchasing explicit-labeled music, by contrast, did not vary according to the age of the shopper. The youngest shoppers, 13 years old, were able to purchase at 87% of the music stores, compared to 66% of electronic game retailers and 33% of movie theaters.

A comparison of major[18] chains in each industry showed that the largest theater circuits and electronic game retailers were more likely to display signs, posters, or other information about the rating system than non-majors, but were not more likely to restrict sales to the teenage shoppers. At major theater chains, 77 of 150 shoppers (51%) attempting to buy tickets to an R-rated movie were successful;[19] at large music retailers, 139 of 150 shoppers (93%) were able to purchase explicit content-labeled recordings;[20] and at large electronic game retailers, 115 of 150 shoppers (77%) were able to purchase M-rated electronic games.[21] There is some evidence that the major

electronic game retailers that have announced specific commitments to enforce purchase restrictions[22] had slightly better compliance than other game retailers, but even at those retailers 73% of the shoppers were able to purchase M-rated games.[23]

There were no statistically significant differences among responses based on the shopper-s gender.[24]

Mystery Shopper Survey Questionnaire

1. Item child attempted to purchase

   ____ R-rated Movie Ticket

   ____ M-rated Video Game

   ____ Music Recording with Parental Advisory

2. Name of movie, music recording or video game child attempted to purchase (For movies, provide title; For music recordings, provide artist—s namand title; For video games, provide manufacturer name and title): _____

3. Did you see any sign, poster, or other information to inform customers of the rating/advisory system or the store/theater-s-policy on rating/advisory enforcement?

4. Was the child able to buy the product?

5. Did the employee at the store/theater ask your child-s-age?

6. Purchase Comments (Describe any interaction that occurred between your child and store/theater employees. For movie theaters, please indicate whether the movie theater was showing only R-rated movies at the time of the evaluation.)

7. Name of store/theater visited: _____

8. City/State where store/theater is located: _____

9. ZIP Code where store/theater is located: _____

10. Number of screens at the movie theater (Answer N/A if the evaluation did not occur at a movie theater).

Tables of Mystery Shopper Survey Data

1. Table of Mystery Shopper Results by Age of Shopper

Was the shopper able to make the purchase?

a. Movie Theaters

	13 years old	14 years old	15 years old	16 years old	Total
No	46 67%	47 57%	36 47%	28 38%	157 52%
Yes	23 33%	35 43%	40 53%	45 62%	143 48%
Total	69	82	76	73	300

b. Music Stores

	13 years old	14 years old	15 years old	16 years old	Total
No	9 13%	8 10%	7 9%	7 10%	31 10%
Yes	62 87%	72 90%	72 91%	63 90%	269 90%
Total	71	80	79	70	300

c. Electronic Game Stores

	13 years old	14 years old	15 years old	16 years old	Total
No	23 34%	25 30%	8 10%	11 15%	67 22%
Yes	45 66%	57 70%	69 90%	62 85%	233 78%
Total	68	82	77	73	300

Was the shopper asked his/her age?

a. Movie Theaters

	13 years old	14 years old	15 years old	16 years old	Total
No	44 64%	46 56%	45 59%	48 66%	183 61%
Yes	25 36%	36 44%	31 41%	25 34%	117 39%
Total	69	82	76	73	300

b. Music Stores

	13 years old	14 years old	15 years old	16 years old	Total
No	64 90%	72 90%	73 92%	61 87%	270 90%
Yes	7 10%	8 10%	6 8%	9 13%	30 10%
Total	71	80	79	70	300

c. Electronic Game Stores

	13 years old	14 years old	15 years old	16 years old	Total
No	53 78%	59 72%	67 87%	59 81%	238 79%
Yes	15 22%	23 28%	10 13%	14 19%	62 21%
Total	68	82	77	73	300

2. Table of Mystery Shopper Results by Gender

Was the shopper able to make the purchase?

	Males	Females
Movies		
Respondents	147	153
Respondents Able to Purchase	62	81
Percent Able to Purchase	42%	53%
Music		
Respondents	148	152
Respondents Able to Purchase	132	137
Percent Able to Purchase	89%	90%
Games		
Respondents	150	150
Respondents Able to Purchase	115	118
Percent Able to Purchase	77%	79%

Was the shopper asked his/her age?

	Males	Females
Movies		
Respondents	147	153
Respondents Who Were Asked Their Age	64	53
Percent Who Were Asked Their Age	44%	35%
Music		
Respondents	148	152
Respondents Who Were Asked Their Age	15	15
Percent Who Were Asked Their Age	10%	10%
Games		
Respondents	150	150
Respondents Who Were Asked Their Age	33	29
Percent Who Were Asked Their Age	22%	19%

3. Table of Purchase Behavior by "Major" Chain vs. Non-"major" Chain

Did the shopper see any sign, poster, or other information to inform customers of the rating/advisory system or the store/theater—s pdy on rating/advisory enforcement? (Percentage of ˜YES™Responses)

Type of Store or Theater	Movies	Music	Games
Non-Major	51%	11%	21%
Major chain	67%	13%	31%

Was the shopper able to purchase the item? (Percentage of ˜YES™Responses)

Type of Store or Theater	Movies	Music	Games
Non-Major	44%	87%	79%
Major chain	51%	93%	77%

Was the shopper asked his/her age? (Percentage of ˜YES™Responses)

Type of Store or Theater	Movies	Music	Games
Non-Major	41%	13%	18%
Major chain	37%	7%	23%

ENDNOTES

1. Some type of retailer enforcement currently is an element only of the movie and electronic game industry self-regulatory systems. The music recording industry does not require that stores restrict sales of explicit-content labeled albums to children under a certain age. *See* September 2000 Report Section V.C.

2. *See* Testimony of Douglas Lowenstein, President, Interactive Digital Software Association, House Subcommittee on Telecommunications and the Internet, July 20, 2001.
At the same time, IDSA noted that it ¯supported these [enforcement] efforts even though the Mature rating itself does not say that a title is not appropriate for a person under 17; rather, the rating says that the content –maynot be suitable—of a person under 17.™*Id.* IDSA also stated that ¯the ultimate decision on what policies to adopt in stores properly lies with the individual retailers who are the best judge of the relationship they want with their own customers.™*Id.*

3. *See* VSDA, *VSDA Declares June "Ratings Awareness Month,"* May 25, 2001 (press release) (available at www.vsda.org).

4. *See* Letter from John T. Mitchell, Counsel for Video Software Dealers Association (Feb. 1, 2001) (on file with the Commission).

5. Some music recording retailers have indicated that they have policies not to sell such recordings to children.

6. To ensure geographic breadth in the sample, one panelist was randomly selected from each state. The state of each panelist was obtained from the Zip code. Panelists from Guam and Puerto Rico were removed from the panel.

7. No shopper visited more than one location for each type of entertainment product.

8. For any given purchase attempt, some shoppers were assigned to go to one of four large chains from a rotating list of the largest chains in each industry. The remaining shoppers were instructed not to go to any specified large chains or to major chains that did not carry the product. For music, two shoppers did go to Wal-Mart, which does not carry explicit-content labeled recordings, but both noted that the recordings did not carry the parental advisory. Exclusion of those two attempts from the sample does not change any of the conclusions reported herein.

9. The contractor required shoppers to submit proof of age and verification for completed purchases by submission of a receipt; if they were not able to make a purchase, the shoppers were to buy another item at the store or a ticket to another movie to get a receipt, except in cases where the shopper went to a movie theater showing only one R-rated movie.

10. Parents completed the questionnaire on the Web site after getting the information from the child (*e.g.*, whether the child was able to purchase the product).

11. Note that differences cited in the analysis of the mystery shopper data are statistically significant differences, with $p<0.05$, unless otherwise noted. Rating information may have been posted in additional stores, but not noticed. These data, however, are consistent with the data obtained in the 2000 survey.

12. In the 2000 survey, the figure for game retailers was 12%; for theaters, it was 54%; and for music retailers it was 12%.

13. The figure in the 2000 survey was 54%.

14. The 2000 survey showed 85% of the shoppers were able to buy an M-rated game.

15. The earlier survey showed shoppers were able to purchase explicit-content labeled music at 85% of the stores.

16. Only 39% of movie cashiers, and 10% of music store clerks, asked shoppers age in this survey, compared to 48% and 16%, respectively, in last year's survey.

17. This improvement was marginally statistically significant ($p=0.066$).

18. So-called "major" chains include only the largest theater circuits and retailers in each industry. The "non-major" category includes independent stores as well as chains that are not among the nation's largest.

19. Theater chains visited by the shoppers: American Multi-Cinema, Inc., Carmike Cinemas, Inc., Century Theatres, Cinemark USA, Inc., GC Companies, Inc., Hoyts Cinemas Corp., Loews Cineplex Entertainment Corp., National Amusements, Inc., Regal Cinemas, Inc., and United Artist Theatre Circuit, Inc. A similar examination of 18 theater circuits that are members of NATO did not reveal a statistically significant difference between enforcement of purchase restrictions at those theaters versus the overall sample.

20. The stores visited by shoppers were owned by the following companies: Best Buy Co., MTS, Inc. (Tower Records), Musicland Group, Inc., Target Stores, Inc., Trans World Entertainment Corp., and Wherehouse Entertainment, Inc. Stores owned by these companies include Best Buy, Camelot Music, Coconuts, Musicland, On Cue, Record Town, Sam Goody, Strawberries, Target, The Wall, Tower Records, and Wherehouse.

21. The retailers visited by the shoppers: Babbage—Etc., Best Buy Co., Inc, Electronics Boutique Holdings Corp., KB Toys, Kmart Corp., Target Stores, Inc., Toys R Us, Inc., and Wal-Mart Stores, Inc.

22. Major electronic game retailers, including Toys R Us, Kmart, Wal-Mart, Target, Circuit City, Staples, and CompUSA, have adopted programs that restrict children's access to M-rated games.

23. Seventy-nine of 109 shoppers were able to purchase successfully at these stores; 35 (32%) noted information about the rating system in the store, and 27% were asked their age. Compared to the other stores shopped, rounding to two decimals, these retailers were more likely to have an advisory that is noticed ($p=0.05$) and more likely to ask the age of the shopper ($p=0.05$). There is weak evidence ($p=0.1$) that these retailers were stricter in enforcing purchase restrictions as well.

24. Girls appeared to be somewhat more successful in purchasing tickets to R-rated films than boys, but the difference was not statistically significant ($p=0.062$). Girls were significantly more successful than boys in purchasing movie tickets in the 2000 survey.

Appendix C

DATA COLLECTION METHODOLOGY AND TELEVISION, INTERNET, AND PRINT DEMOGRAPHICS

In requesting this Report, the Senate Commerce Committee asked that the Commission examine whether violent R-rated movies, explicit-content labeled music, and M-rated video games continue to be marketed to children under the age designated in the rating or label, including ¯popular teen media,™ and whether rating information is included in the advertising. This Appendix describes the media monitoring the Commission undertook to gather data for this Report. It also sets out demographic data for the audiences for the television programs, Web sites, and publications discussed in the Report.

In determining which teen media to review, the Commission focused on television programs, magazines, and Internet sites that are popular with teens, and more generally with children under age 18. Most of the television programs and magazines were identified in the marketing plans reviewed for the September 2000 Report as media used when the industry-s target audience included children.

I. POPULAR TELEVISION SHOWS AMONG TEENAGERS

The Commission monitored advertising that occurred in June and July 2001 on network and cable television, including shows in syndication, with special focus on the after-school and early prime-time slots when youth are most likely to be watching television. The Commission also reviewed Nielsen data showing where each particular ad for an R-rated movie, M-rated game, or explicit-labeled recording was first aired between January and August 2001; demographic data for the top ten network, cable, and syndicated television programs among children age 12-17; and demographic data for programs described in studio documents as ¯Teen™ programs.

A. Network, Cable, and Syndicated Television Monitoring

The Commission contracted with a commercial advertising tracking firm, Video Monitoring Service (¯VMS™), to track advertisements for rated or labeled products on popular teen programs

on television. VMS continuously monitored the network, cable, and syndicated[1] programs set out in Tables A and B in June and July 2001. With the exception of *Jackass*, *WWF Livewire*, and *WWF Superstars*, all of these programs aired between 4 p.m. and 9 p.m.[2] The television audience data reported in the tables below is for audiences under age 18, or for audiences age 12-17. As R-rated films and M-rated electronic games are restricted only for children under 17, data for children under 17 would be most relevant. However, the age breakdowns set forth in the tables are the standard categories used for television audience measurement.

There were 82 ads for five violent R-rated films, 47 for 17 explicit-content labeled recordings, and three ads for one violent M-rated electronic game on the monitored programs.

Table A: Network and Cable Television Programs Monitored

Program	Average Audience Age 2-17 (thousands)	Average Total Audience (thousands)	Audience Under 18 (%)	Network
Malcolm in the Middle (Sun.)	3809	12353	31	FOX
The Simpsons	3706	12654	29	FOX
Malcolm in the Middle (Wed.)	2868	9581	30	FOX
WWF Smackdown	2403	6946	35	UPN
Fear Factor	2128	11998	18	FOX
Grounded for Life	2079	7624	27	FOX
Titus	2069	8467	24	FOX
That '70s Show	2025	9345	22	FOX
7th Heaven	1850	5909	31	WB
Dark Angel	1745	8927	20	FOX
Sabrina the Teenage Witch	1263	3235	39	WB
Dawson's Creek	995	3727	27	WB
WWF Heat	565	1698	33	MTV

Jackass	530	1400	38	MTV
Total Request Live	344	593	58	MTV
WWF Livewire	335	1150	29	TNN
WWF Superstars	292	1113	26	TNN
106th & Park	235	501	47	BET
Direct Effect	177	354	50	MTV

The syndicated programs monitored included those set out in Table B, as well as *The Simpsons*. Demographic data are not available for that program, but it is perennially ranked as one of the most popular programs for youth.[3]

Table B: Syndicated Television Programs Monitored

Program	Average Audience Age 2-17 (thousands)	Average Total Audience (thousands)	Audience Under 18 (%)	Network
Friends	1569	7897	20	Syndicated
Sabrina the Teenage Witch	1161	2451	47	Syndicated
Drew Carey	1093	4782	23	Syndicated
7th Heaven	928	2346	40	Syndicated
3rd Rock from the Sun	905	4333	21	Syndicated
Home Improvement	819	3122	26	Syndicated
Spin City	765	3847	20	Syndicated
Moesha	756	1967	38	Syndicated
Jamie Foxx	628	1962	32	Syndicated
Sister, Sister	569	1407	40	Syndicated
The Nanny	448	2020	22	Syndicated

B. "First Airing" Data for Television Advertisements

To supplement the monitoring data described above, the Commission obtained "first airing™ data from contractor Video Monitoring Services ("VMS™) to gain additional information about where industry members placed their advertisements. The first airing data provide, among other information, the date, time, station, and program on which each different advertisement for a violent R-rated movie, explicit content recording, or violent M-rated game first aired. These data document only the first showing of an advertisement, and provide no information about additional airings of the ad on that program or others.

The Commission reviewed first airing data for the period January 2001 to early August 2001. Focusing on advertisements initially shown on programs airing between 4:00 p.m. and 9:00 p.m., the Commission found that 28 ads[4] for 15 violent R-rated films premiered on monitored programs › identified in Tables A and B › or on other programs with substantial teen audiences.[5] Fifty-eight ads for 44 explicit-content labeled albums appeared on the monitored programs or on other programs with substantial teen audiences.[6] No ads for violent M-rated games appeared for the first time on television during the period between 4:00 p.m. and 9:00 p.m.[7]

C. Top Teen Programs on Network, Cable, and Syndicated Television

Tables C, D, and E set out the top ten programs in terms of youth audience for network, cable, and syndicated television programs among teens 12-17:

Table C: Top Ten Network Programs in Terms of Youth Audience Size (Age 12-17)

Program	Average Audience 12-17 (thousands)	Average Total Audience (thousands)	Percentage of Audience 12-17	Network
Temptation Island	2055	16576	12%	FOX
Malcolm in the Middle (Sun.)	1854	12448	15%	FOX
The Simpsons	1773	12743	14%	FOX
Survivor II	1710	29761	6%	CBS

Boot Camp	1484	11043	13%	FOX
Malcolm in the Middle (Wed.)	1405	9581	15%	FOX
Titus	1187	8530	14%	FOX
WWF Smackdown	1182	6942	17%	UPN
Grounded for Life	1159	7734	15%	FOX
That '70s Show	1118	9415	12%	FOX

Table D: Top Ten Cable Programs in Terms of Youth Audience Size (Age 12-17)

Program	Average Audience 12-17 (thousands)	Average Total Audience (thousands)	Percentage of Audience 12-17	Network
WWF Entertainment	1111	6318	18%	TNN
Jackass	800	2952	27%	MTV
Real World X	624	2499	25%	MTV
Jumping Ship	604	2855	21%	Disney Channel
Heavyweights	543	2211	25%	Disney Channel
RR/RW Challenge 2001	535	1602	33%	MTV
BET Awards Show	525	2589	20%	BET
Pop Stars	505	1571	32%	MTV
Fear - The Series	504	1840	27%	MTV
Tough Enough	501	2285	22%	MTV

Table E: Top Ten Syndicated Programs in Terms of Youth Audience Size (Age 12-17)

Program	Average Audience 12-17 (thousands)	Average Total Audience (thousands)	Percentage of Audience 12-17	Network
World Wrestling Federation	2081	12481	17%	Syndicated

Century 16	1050	8829	12%	Syndicated
Friends	831	7926	10%	Syndicated
WCW Wrestling	594	6695	9%	Syndicated
Drew Carey	591	4797	12%	Syndicated
Imagination IV	572	3979	14%	Syndicated
Seinfeld	518	6724	8%	Syndicated
Sabrina the Teenage Witch	488	2461	20%	Syndicated
3rd Rock from the Sun	475	4340	11%	Syndicated
Friends (weekend) (tied for 10th)	457	4290	11%	Syndicated
Seventh Heaven (tied for tenth)	457	2347	19%	Syndicated

D. "Teen" Program Audience Data

Table F sets forth the youth audience share for television programs that studio documents submitted for this Report describe as "Teen™ programs. All of these programs were in NBC's Saturday "TNBC™ line-up.

Table F: "Teen" Program Audience Data

Program	Average Audience 2-17 (thousands)	Average Total Audience (thousands)	Percentage of Audience Under 18	Network
One World	542	2320	23%	NBC
City Guys (A)	535	2462	22%	NBC
Just Deal	507	2270	22%	NBC
City Guys (B)	482	1983	24%	NBC
Hang Time	425	2508	17%	NBC

II. PRINT MEDIA

A. Magazines Reviewed to Assess Ad Placement

From June to September 2001, the Commission reviewed magazines with majority or substantial youth audiences. Most of these magazines were magazines that industry marketing plans reviewed for the September 2000 Report indicated were used when the target audience included children under 17. Table G below sets out the name of the publication, the particular issues reviewed for this report, and age demographic data for the publication (updated from the September 2000 Report, unless otherwise noted):

Table G: Youth-Oriented Print Publications

Magazine	Issues Reviewed	Age Demographics
100% Independent PlayStation	6/01, 7/01, 8/01, 9/01	Mean Age: 21.4 Median Age: 17
CosmoGirl!	6/01, 7/01, 8/01, 9/01	Median Age: 16.5
DC Comics	7/01, 8/01, 9/01	Kids group - Median age: 8.6 Teen group - Median age: 15.8 Adult group - Median age: 28.8
Electronic Gaming Monthly	6/01, 7/01, 8/01, 9/01	Average age 21; Median age 18 (47% under 18) (data from April 2001 Report);
Game Pro	6/01, 7/01, 8/01, 9/01	54% of subscribers are 16 and under; 35% of newsstand readers are 16 and under
Marvel Comics	7/01 , 8/01, 9/01	Junior group - Median age: 9 Senior group - Median age: 14
Metal Edge	6/01, 7/01, 8/01, 9/01	Average age: 21 (data from April 2001 Report)
Nintendo Power	6/01, 7/01, 8/01, 9/01	Median age: 14
Right On!	6/01, 8/01, 9/01	Female median age: 15 Male median age: 18
Seventeen	6/01, 7/01, 8/01, 9/01	Median age: 16
Teen	6/01, 7/01, 8/01, 9/01	Median age: 15.4
Teen Movieline	Spring '01	No demographic information.

Teen People	6/01, 7/01, 8/01, 9/01	Median age: 15.4
Thrasher	6/01, 7/01, 8/01, 9/01	Mean age: 16.3 Median age: 17.5
Tips & Tricks	6/01, 7/01, 8/01, 9/01	Mean age: 20.6 Median age: 18.1 (49.8% are under 18)
WWF	6/01, 7/01, 8/01, 9/01	62% between 12 and 17
YM	6/01, 7/01, 8/01, 9/01	Median age: 16.1

B. Magazines and Newspapers Reviewed to Assess Rating Information Practices

To assess rating and labeling information practices (*e.g.*, whether a rating or rating reason was displayed clearly and conspicuously), the Commission examined ads in the following magazines and general circulation newspapers, in addition to the 17 magazines identified above. Because rating and labeling information is primarily for parents, the Commission reviewed general circulation periodicals, and not just periodicals aimed at children. The general circulation periodicals were reviewed only for rating and labeling information, not to assess whether ads were targeted to children.

Table H: Other Print Publications Reviewed for Rating Information

Magazines	Issues Reviewed
Computer Gaming World	6/01, 7/01, 8/01, 9/01
Xpert Gamer	6/01, 7/01, 8/01, 9/01
PC Gamer	6/01, 7/01, 8/01, 9/01
Rolling Stone	7/19/01, 8/16/01
Spin	6/01, 7/01, 8/01, 9/01
Vibe	6/01, 7/01, 8/01, 9/01
Wizard	7/01, 8/01, 9/01
Newspapers	**Issues Reviewed**

Atlanta Journal-Constitution	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Boston Globe	6/8/01, 6/15/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Chicago Sun-Times	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Chicago Tribune	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Dallas Morning News	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Los Angeles Times	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
New York Post	6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01
Newspapers (Table H continued)	**Issues Reviewed** (Table H continued)
New York Times	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Newsday	6/8/01, 6/22/01, 7/6/01, 7/20/01, 7/27/01
The [Cleveland] Plain Dealer	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
San Francisco Chronicle	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
San Jose Mercury News	6/1/01, 6/8/01, 6/22/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Seattle Post-Intelligencer	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Seattle Times	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Washington Post	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01

C. Demographics of Magazines in Music Marketing Plans

Table I sets out the demographics for certain youth-oriented magazines in which music producers planned to advertise music recordings, according to the marketing plans submitted.

Table I: Demographics for Youth-Oriented Magazines for Planned Music Recording Advertisements

Magazine	Demographic Data
Big Brother	Average age: **16** Median age: **18**
Black Beat	Female median age: **15** Male median age: **18**
Heckler	Median age: 17 Average age: **19**
Hit Parader	Average age: **18.1**
Metal Edge	Average age: **21** (data from April 2001 Report)
Right On	Female median age: **15** Male median age: **18**
Seventeen	Median age: **16**
Teen People	Median age: **15.4**
Thrasher	Average age: **16.3** Median age: **17.5**
Transworld Skateboarding	Average age: **15.8** Median age: **15**
Word Up	Average age: **17.1** Median age: **16.5**

III. WEB SITE DEMOGRAPHICS

Table J below sets out a list of certain Web sites on which R-rated movies, M-rated games, and/or explicit content music were advertised, according to documents submitted for this Report; the average audience share under age 18 for all of these was 30% or greater, as measured by unique visitors, from May to July 2001.[ii]

Table J: Web Site Audience Demographics

Web Site	May 2001	June 2001	July 2001
alloy.com	68%	65%	63%
bet.com	45%	40%	41%
blink182.com	58%	69%	61%
ccs.com	57%	71%	62%
cdmag.com	32%	N/A	N/A
comedycentral.com	28%	38%	33%
farmclub.com	31%	30%	40%

gamespot.com	33%	31%	38%
gamespy.com	32%	36%	31%
getmusic.com	35%	37%	37%
ign.com	43%	46%	47%
Iturf.com	46%	55%	36%
launch.com	31%	29%	32%
limpbizkit.com	51%	69%	N/A
mtv.com	42%	41%	46%
music.com	48%	46%	48%
rollingstone.com	26%	31%	35%
seventeen.com	63%	66%	71%
teenpeople.com	46%	72%	69%
ugo.com	23%	39%	33%
winamp.com	28%	33%	35%
wwf.com	29%	37%	36%

ENDNOTES

1. The syndicated programs aired in New York City on Fridays on Channels 9 and 11 from 6 to 8 p.m. and Channel 5 from 5 to 8 p.m. from June 1 to July 20, 2001, and in Los Angeles on Mondays on Channels 5 and 11 from 5 to 8 p.m. from June 4 to July 23, 2001.

2. *WWF Smackdown* airs between 8:00 p.m. and 10:00 p.m.

3. *See* Appendix I to the September 2000 Report at 1; Appendix A to April 2001 Report at A-4 and n.7. Although older episodes of *The Simpsons* are actually no longer in "barter syndication,™ the term is applied here to distinguish older episodes from new ones.

4. Where a particular motion picture or recording appears two or more times in the first airing data, different ads for that film or recording initially aired on those programs.

5. Using Nielsen data, the Commission identified other programs with substantial youth audiences in addition to those monitored. For motion pictures, these included *Road Home* on MTV (50% under 18), *Making of the Fast [and the Furious]* (39%), *Buffy the Vampire Slayer* (29%), and *WCW Thunder* (22%).

6. For music recordings, these included *Daria* (53% under 18) and *Celebrity Deathmatch* (25% age 12-17).

7. Although some advertisements for electronic games were initially aired during the "first airing™ data review period, none initially aired in the 4:00 p.m. to 9:00 p.m. slot.

8. The Commission reviewed Nielsen//NetRatings data that was based on its panel of Internet users. Neilsen//NetRatings measures and reports internet audience behavior based on data collected from 62,000 home users in the U.S.

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